Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner, National Muffler Dealers Association, Inc. (hereinafter "the Association"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on November 21, 1977, affirming denial of

Petitioner's application for a tax exemption as a "business league" pursuant to Section 501(c)(6) of the Internal Revenue Code.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported and is included as Appendix A (infra, p. 1a). The opinion of the District Court, issued from the bench, was not reported and is included as Appendix B (infra, p. 8a).

JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 1977 (Appendix C). Rehearing was not sought. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The time for filing this petition extends to and includes February 19, 1978.

QUESTION PRESENTED

WHETHER THE INCOME TAX EXEMPTION GRANTED TO "BUSINESS LEAGUES" BY SECTION 501(c)(6) OF THE INTERNAL REVENUE CODE IS DEFEATED BY THE FACT THAT ALL MEMBERS OF THE APPLYING ASSOCIATION HOLD A FRANCHISE FROM THE SAME FRANCHISOR.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Petitioner's application for exemption as a business league was based upon Internal Revenue Code, 501(c)(6) which provides that the following entities are exempt from federal income taxation:

> Business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players)* not organized for profit and no part of the net earnings of which inures to the

* The football league language was not added until 1966. This has been the only change in the Statute since 1913.

> benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(6), interpreting this section, provides in pertinent part, as follows:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

STATEMENT OF THE CASE

Petitioner is a trade association comprised of muffler dealers throughout the country, all of whom are franchisees of Midas International Corp., - "Midas Muffler" dealers. Organized on January 8, 1971 under

the New York Not-For-Profit Law, petitioner sought, and ultimately received, recognition from Midas as a bargaining agent of the franchisees. The entire purpose of the association has been to redress the traditional economic imbalance inherent in the franchisor-franchisee relationship.

Other functions of the association include publication of a newsletter advising members of developments in relations with the franchisor and serving as a forum for the exchange of information and ideas and conducting an annual convention which addressed problems common to the members. Petitioner's membership is comprised of Midas franchisees with approximately 620 shops, representing 81% or 82% of the Midas shops in the country.

The purposes of the petitioner association, however, are also well articulated in Article I of its by-laws:

> The purposes of this Association are to foster and promote the interests of those individuals, partnerships and corporations who are engaged in business as muffler dealers and installers and related activities, to promote cooperation and mutual interest among its members, to advance the trade and commerce of its members, to encourage the exchange of ideas among its members for their common good and welfare, to secure, classify and disseminate to its members all information essential or helpful in the conduct of their business.
>
> The Association shall do anything necessary and proper for the accomplishment of any of the foregoing purposes or any other purpose which may be recognized as a proper and lawful objective of trade associations, all of which shall be consistent with the public interest, as well as in the interest of the members.

Petitioner seasonably sought exemption as a business league pursuant to Section 501(c)(6), which exemption was denied by the Internal Revenue Service (IRS). Having thereafter exhausted its administrative remedies, paid the taxes under protest and complied with all prerequisites to an action

for a refund, this action was commenced in the District Court for the Southern District of New York on July 1, 1975. Jurisdiction of the District Court was based upon 28 U.S.C. § 1346(a)(1). After a trial before Hon. Lawrence W. Pierce on May 24, 1977, the complaint was dismissed. By decision dated November 21, 1977, the judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit.

The essential contention of the petitioner is that it is a "business league" entitled to the exemption conferred by Congress. The respondent contends essentially that the exemption is lost because petitioner's members are all franchisees of one franchisor and do not, therefore, constitute a "line of business" as contemplated by the pertinent IRS regulation.

In affirming the dismissal of petitioner's action, the Second Circuit, in

essence, has adopted the respondent's contention.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ requested for two basic reasons:

1. Importance of the Issue

Franchising has a significant and increasing effect upon the economy of the United States, the United States Department of Commerce having estimated that retail sales by franchise outlets throughout the country will reflect 1977 sales of nearly $218 billion, as compared to total retail sales of $703 billion, or 31%. Franchising in the Economy, 1975-1977, U.S. Department of Commerce, December, 1976 (pp.5-6). This ever increasing impact of franchising upon the country's economy makes the entitlement of a franchisee association to tax exempt status a significantly important question

of federal law and one which has not been, but should be, addressed by this Court. The significance of the question is highlighted by the fact that a number of state legislatures have enacted legislation specifically recognizing the need of franchisees to join in associations to deal with their common problems. The granting of tax exemptions to associations of employees joining together to deal with their common employer (IRC § 501(c)(5)) but the denial of a similar exemption to franchisees joining together to deal with their common franchisor raises a very significant federal issue. Petitioner does not believe Congress had any such intention.

2. Conflict in Circuits

The decision of the Second Circuit in this case is in direct conflict with a decision of the Seventh Circuit, the only other reported case dealing

specifically with the issue herein. The Seventh Circuit has affirmed a judgment granting the business league exemption to a trade association comprised solely of individuals, firms or corporations engaged in the bottling and sale of a single product. Pepsi-Cola Bottlers' Association v. United States, 369 F.2d 250 (7th Cir. 1966). The Court below has specifically declined to follow the decision in Pepsi-Cola. (App. A, p.5a)

Merits of Petitioner's Position

Petitioner believes that the two considerations set forth above are alone sufficient to merit granting of the requested writ of certiorari. It is further respectfully urged, however, that a fair review of the decision of the Second Circuit will demonstrate that that court has far too narrowly interpreted the intent of Congress in creating the business league exemption.

In assessing the statutory grant of exemptions within Section 501(c)(6), the Second Circuit concluded that, "...it is the manifest intention of Congress in § 501 (c)(6) to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests." (App. A, p. 5a) The Court then addressed itself to the language of the supporting regulation which states that the activities of a business league "...<u>should be directed to the improvement of business conditions of one or more lines of business</u> as distinguished from the performance of particular services for individual persons." Treas. Reg. 1.501(c)(6)-1, as cited by Court, App. A, p. 5a . (Emphasis by Court) Placing its imprimateur upon the quoted language, the Court found that the "line of business" requirement contained therein "is well suited to assuring that an organization's efforts do indeed benefit

a sufficiently broad segment of the business community." (App. A, p. 5a).

From these dual premises, the Court proceeded to affirm denial of petitioner's requested exemption: "Applying the 'line of business' requirement with a sensitivity to the general considerations which underlie it , we have little difficulty in concluding that the Association does not merit an exemption." (App. A, p. 6a) The essential reason for the affirmation appears to be the finding of the District Court that petitioner "... railed to establish that it conferred any benefit on muffler dealers in general. And even if the Association was able to make such a showing, the industry-wide benefit would be purely incidental to the organization's primary purpose-improving conditions for Midas dealers-and thus an insufficient basis for awarding an exemption. (citing cases)" (App. A, pp. 6-7a)

We respectfully submit that the interpretation placed by the Court upon the statutory grant of the business league exemption is far too narrow and would, if affirmed by this Court, have the effect of denying the exemption to an entire class of organizations which is clearly entitled thereto. There is a genuine need for associations of franchisees who must deal with common problems which are shared by no one else and, although the term "franchisee association" does not appear in the statute, the entire statutory scheme leaves little doubt that the term "business league" properly encompasses within its terms precisely such organizations as the petitioner. In this regard, it is imperative to recognize that, enacted in 1913, Section 501(c)(6) (and the Treasury Regulation subsequently promulgaged with respect thereto) was promulgaged before franchising was even known and long before it had appeared as an integral part of the

American economy. Undefined in the statute, Congress surely intended "business league" to be flexible enough to encompass organizations not then conceived. A fair reading of the statutory scheme reveals a Congressional intent to encourage the formation of organizations consisting of businessmen grouping together to accomplish valid business goals which they could not accomplish by themselves. Indeed, the business league exemption has been granted to a number of diverse groups, including, for example: groups of businessmen whose sole common interest was to deal with legislation to improve their competitive standing in the respective businesses in which they were engaged (Rev.Rul.61-177, 1961-2 Cum.Bull. 117); groups of businessmen with a common interest in dealing with labor unions representing their employees (Rev.Rul. 65-164,1965-1 Cum.Bull.); and groups of employees with a common interest in dealing with their employers (IRC § 501(c)(5)). In

each such instance, the function of the exempt organization was to perform an activity beneficial to its members which such members could not effectively perform alone.

The Internal Revenue Service routinely grants the business league exemption to groups of businessmen whose essential function is to collectively bargain with the unions representing their employees. Would the Second Circuit find in these exemptions a promotion of "some aspect of the general economic welfare" but fail to find such benefit when businessmen join together to collectively bargain with their common franchisor? What difference does it make to the "general economic welfare" that a group of businessmen is bargaining with its common franchisor as opposed to a labor union? The answer, we submit, is none.

As the Eighth Circuit properly observed in affirming a business league exemption granted to a different type of association, "/The Government/ ... contends that Congress intended to exempt only such organizations as were devoted entirely to the general public welfare. Congress did not so say. "Crooks v. Kansas City Hay Dealers' Association, 37 F.2d 83, 84 (8th Cir. 1929) (emphasis added). This is not to say, however, that Congress did not expect some type of public benefit to flow from its grant of tax exemption. We suggest that the Congressional intent to encourage groups of businessmen to join together to accomplish goals which they could not accomplish by themselves was directed at the creation of an economic environment favorable to the individual entrepreneur traditionally regarded as the backbone of the American economy. This is precisely the role of the franchisee association,

which gives to the individual entrepreneur encouragement to enter into business rather than being discouraged by the inherently unequal economic power between the individual franchisee and the monolithic franchisor. This creation of an economic balance between opposing forces militates against monopolization and is consistent with the philosophy underlying this country's antitrust and labor relations laws. It is clearly within the type of public benefit which Congress intended to flow from its creation of tax exempt organizations. The Second Circuit, however, declined to address this contention, apparently finding instead the need for a more concrete, or "visible", type of benefit.

In Pepsi-Cola Bottlers' Association v. United States, supra, in affirming the District Court's determination that the association was entitled to the business

league exemption, the Seventh Circuit held:

> The plaintiff association cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute and regulations a limitation wholly unsupported by the legislative history.
> 369 F.2d at 252 (emphasis added)

This is, however, precisely what the decision of the Second Circuit herein attempts to do.[1]

Recognizing that the statute itself does not attempt to define "business league", the Second Circuit, as it did in Produce

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1. Discussing Pepsi-Cola, the Second Circuit stated merely, in a footnote, that to the extent that its holding was in disagreement with that of the Seventh Circuit, "...we decline to follow the majority opinion in that case." (App. A, p. 5a). In so stating, the Court noted, properly, that the IRS has also stated that it would not follow the Pepsi-Cola decision. Rev. Rul. 68-182, 1968 Cum.Bull. 263. It is well recognized, however, that Revenue Rulings are not law and are not in any way binding on the courts. Mercantile Bank & Trust Co. v. U.S., 312 F. Supp. 1164, aff'd. 441 F.2d 364 (8th Cir. 1970).

Exchange Stock Clearing Ass'n. v. Helvering, 71 F.2d 142 (2d Cir. 1934), has relied upon the doctrine of noscitur a sociis and has thus sought to define "business leagues" by "looking at the general characteristics of the organizations with which they are grouped." (App. A, p. 4a) The common characteristic which the Court finds in Section 501(c)(6) is the fostering of well-being "...within a broadly-defined segment of the commercial sector." (App. A, p. 5a)

It is from this starting point that the Court finds within the statute the requirement that the exempt organization "promote some aspect of the general economic welfare." The Court, however, has failed to address itself to the fact, raised before it by petitioner, that Congress has included within the organizational grouping in the statute "professional football leagues (whether or not administering a pension fund for football players)." We strongly question

whether any of the other organizations grouped in Section 501(c)(6) (boards of trade, chambers of commerce, real estate boards) possesses the "general characteristics of a football league." Regardless, however, it is certain that the "general economic welfare" test espoused by the Second Circuit is satisfied at least as well by a franchisee association as by a football league.

Quite simply, petitioner believes that a business league is properly defined in the first of the applicable Treasury Regulation:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

We believe that this is the language which properly embodies Congressional intent and

that, in denying petitioner the requested exemption the IRS and the Court below have withheld the exemption from precisely the type of organization for which it was intended.

CONCLUSION

The issue of whether a nationwide association of franchisees with a common franchisor is properly entitled to a business league exemption, in view of the continuing and burgeoning development of the franchising concept as a commercial vehicle in our economy, is an important issue which has not previously been dealt with by this Court. This fact, combined with the conflict existing between the Second and Seventh Circuits with regard to the issue, makes granting of the requested writ eminently appropriate.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 252—September Term, 1977.

(Argued November 10, 1977 Decided November 21, 1977.)

Docket No. 77-6106

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Before:

KAUFMAN, *Chief Judge,*
SMITH and MULLIGAN, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Southern District of New York, Pierce, *J.*, dismissing plaintiff's complaint, which sought a "business league" exemption from federal income taxation pursuant to Section 501(c)(6) of the Internal Revenue Code.

Affirmed.

MYRON P. GORDON, New York, New York (Monte Engler and Hoffberg, Gordon Rabin & Engler, of counsel), *for Plaintiff-Appellant.*

PETER C. SALERNO, Assistant United States Attorney (Robert B. Fiske, Jr., United States Attorney for the Southern District of New York; Kent T. Stauffer, Patrick H. Barth, Assistant United States Attorneys, of counsel), *for Defendant-Appellee.*

KAUFMAN, *Chief Judge:*

In addition to its enormous complexity, the Internal Revenue Code often speaks in generalities, and its contours and boundaries are frequently left to be filled by administrative and judicial interpretation. We are called upon to add yet another detail to the Code's broad canvas in determining whether the National Muffler Dealers Association, Inc. ("Association") is qualified to take a tax exemption for the years 1971-73 as a "business league" under §501(c)(6) of the Internal Revenue Code. We agree with the district court that the Association does not benefit an entire "line of business" as required by the treasury regulations, and, accordingly, does not merit an exemption. We therefore affirm the dismissal of the Association's complaint.

I.

The National Muffler Dealers Association was organized in 1971, under the New York Not-For-Profit Corporation Law, as a trade association of "Midas Muffler" dealers. At the time, an internal struggle was taking place within Midas International Corporation ("Midas"), the franchisor of all Midas Muffler dealers, and many of Midas's franchisees were concerned that they might suffer from the pending corporate shake-up. As a consequence of this, they formed the Association to secure themselves against the whims of a new Midas management.

Although the Association's Certificate of Incorporation described its purpose as the promotion of the best interests of muffler dealers generally, its first set of by-laws restricted membership to muffler dealers holding a valid Midas franchise. On October 23, 1972, in an apparent effort to obtain the tax benefits it now seeks, the by-laws were amended to allow any muffler franchisee to join. Since its inception, however, the Association's members have apparently all been Midas Muffler franchisees. During the tax years in question, approximately 50% of all Midas dealers were members, and although, through the Association's efforts, that figure now stands at 80%, there has never been any attempt to recruit outside of the Midas chain.

The Association first attempted to deal with a specific problem, but it soon decided to extend the scope of its activities. In its endeavors, the Association sought generally to redress the inequality of bargaining power existing between its members and Midas, and has been a formidable force at the negotiating table. As a result of its dealings with Midas, franchisees now conduct their businesses under a twenty-year franchise agreement, providing, *inter alia*, that specific cause must exist to terminate a franchise and that disputes must be submitted to arbitration. The group also succeeded in persuading Midas to eliminate its requirement that customers pay a service charge when they seek to replace a guaranteed Midas Muffler. The Association, in addition, provides a number of supplemental services inuring only to the benefit of its members. For example, it sponsors insurance programs, and publishes a newsletter. And, the Association holds an annual convention at which issues of concern to Midas dealers are discussed.

II.

In evaluating the Association's claim to tax-exempt status, our inquiry must first focus on Section 501(c)(6) of the Internal Revenue Code, which provides an exemption to

> [b]usiness leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

There is no challenge to the Association's non-profit status, or the disposition of its earnings. Ours is therefore the lexicographer's task of deciding what is meant by a "business league", and whether the instant Association falls within that definition.

The statute itself does not provide direct guidance. Absent such an explicit directive, we have, in the past, followed the doctrine of *noscitur a sociis*, and sought to define "business leagues" by looking at the general characteristics of the organizations with which they are grouped. In *Produce Exchange Stock Clearing Ass'n* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934), Judge Swan, joined by Judges Learned Hand and Chase, denied an exemption to a stock clearing association which merely served the convenience of its members, finding that characteristic to be one not shared by the business entities listed in the statute. This approach to statutory construction is taken by the treasury regulation enacted pursuant to this section. The regulation provides that,

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not engage

in a regular business of a kind ordinarily carried on for profit. It is an organization *of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business* as distinguished from the performance of particular services for individual persons." Treas. Reg. §1.501(c)(6)-1 (emphasis added).

The admittedly common characteristic of the organizations enumerated in §501(c)(6) is that they foster well-being within a broadly-defined segment of the commercial sector. For a chamber of commerce, that sector is, of course, defined geographically; for a board of trade, a specified business or industry is often an additional defining factor. *Cf. Retailers Credit Ass'n* v. *Commissioner*, 90 F.2d 47 (9th Cir. 1937); Rev. Rul. 73-411, 1973-2 Cum. Bul. 180. Thus, it is the manifest intention of Congress in §501(c)(6) to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests. The "line of business" requirement contained in the regulations is well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community.[1] Having thus determined that the regu-

1 To the extent that our holding is in disagreement with the Seventh Circuit's decision in *Pepsi-Cola Bottlers' Ass'n* v. *United States*, 369 F.2d 250 (7th Cir. 1966), we decline to follow the majority opinion in that case. There, the court granted an exemption to a franchisee association composed solely of bottlers of Pepsi-Cola, holding that the "line of business" requirement in the regulations had no support in the statute. Judge Kiley, in a dissent, relied on the doctrine of *noscitur a sociis*, and our *Produce Exchange* case, *supra*, in upholding the validity of the regulation. The Internal Revenue Service has stated that it will not follow the decision in *Pepsi-Cola*, Rev. Rul. 68-182, 1968-1 Cum. Bull. 263, noting that an organization which promotes a single brand or product is not devoted to the improvement of an entire line of business.

lation is reasonable, the limitation it imposes on the meaning of "business league" must be accorded the force of law. *Credit Bureau of Greater New York, Inc.* v. *Commissioner*, 162 F.2d 7 (2d Cir. 1947). *See generally Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496 (1948).

Applying the "line of business" requirement with a sensitivity to the general considerations which underlie it, we have little difficulty in concluding that the Association does not merit an exemption. First, the Association does not draw its franchisee members from a broad base. Indeed, all bear a well-defined business relationship to a single private firm—Midas International Corporation. And the Association's activities reflect its limited constituency. It has endeavored solely to serve the interests of Midas dealers in their day-to-day dealings with their franchisor. The bulk of the muffler industry, in short, is excluded.[2] To the extent that the Association is successful in improving conditions for its members, it does so partially at the expense of non-Midas dealers, who will find themselves facing stronger competition.

The Association attempts to circumvent this outcome by suggesting that its activities do ultimately benefit all muffler franchisees. Given Midas's dominant position in the muffler industry, the Association claims that franchisees of other muffler suppliers will seek and be accorded the benefits won by Midas dealers. We note, however, that Judge Pierce clearly found that the Association had failed

2 In an effort to demonstrate Midas's dominant position in the muffler industry, the Association introduced the testimony of Robert J. Kaden, a market researcher who had conducted a study for Midas. Kaden's investigations indicated that in 18 major metropolitan markets, only approximately 21% of the male consumers had replaced their mufflers at Midas shops. Midas's substantial competitors were private garage or service stations (23%); persons who replaced their own mufflers (27%); other muffler specialists (11%); mass merchandisers (10%); and new car dealers (8%).

to establish that it conferred any benefit on muffler dealers in general. And even if the Association was able to make such a showing, the industry-wide benefit would be purely incidental to the organization's primary purpose—improving conditions for Midas dealers—and thus an insufficient basis for awarding an exemption. *See, e.g., Contracting Plumbers Cooperative Restoration Corporation* v. *United States,* 488 F.2d 684 (2d Cir. 1973), *cert. denied,* 419 U.S. 827 (1974); *General Contractors' Ass'n* v. *United States,* 202 F.2d 633 (7th Cir. 1953).

Finally, the Association argues that since the phenomenon of franchising is relatively new, and could not have been contemplated by the legislature when the predecessor to Section 501(c)(6) was enacted in 1913, we should recognize the strong public interest franchisee organizations serve by granting them an exemption.[3] Whatever its merits, that argument is more appropriately directed to Congress. Nothing in the statute empowers the courts to grant tax exemptions to organizations, however novel, which serve merely some public interest but not the broad interest intended by Congress.

The judgment of the district court is accordingly affirmed.

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3 In pressing this argument, the Association notes the similarities between itself and labor unions, which are granted an exemption under §501(c)(5). It has, however, made no claim that it is qualified for an exemption as a labor organization, and we accordingly express no opinion with regard to the relevance of that section of the Code.

APPENDIX B

THE COURT: This tax refund action having been tried before this Court without a jury on May 24, 1977, the Court now makes the following findings of fact and conclusions of law pursuant to Rule 52(a) Federal Rules of Civil Procedure.

Findings of Fact:

1. Plaintiff, National Muffler Dealers Association, Inc., was organized on January 18, 1971 under the New York Not-For-Profit Corporation Law as a trade association of Midas Muffler franchisees.

2. On or about December 29, 1971, plaintiff filed with the Internal Revenue Service, on Form 1024, an application seeking a tax exemption as a business league under Section 501(c)(6) of the Internal Revenue Code ("the Code").

3. On or about March 28, 1972, the above application was denied. After a District Conference on October 4, 1972, the

denial was confirmed by letter dated June 18, 1974.

4. On or about July 22, 1974, plaintiff filed returns and made tax payments for the fiscal years ending November 30, 1971, 1972, and 1973. The payments were in the sums of $1,237.00, $1,431.00, and $2,689.00 for each of the above years respectively, for a total sum of $5,357.00.

5. On or about September 24, 1974, plaintiff filed claims for refund of the aforesaid amounts with the Internal Revenue Service on the ground that its application for exemption as a business league had been erroneously denied.

6. By letter dated March 24, 1975, the Internal Revenue Service notified plaintiff that the refund claim for fiscal year 1972 had been disallowed.

7. All of the plaintiff's members are Midas Muffler franchisees and throughout its history plaintiff has had no member who

is not a Midas Muffler franchisee.

8. On October 23, 1972, plaintiff's by-laws were amended to eliminate the word "Midas" so that membership was available to any franchised muffler dealers.

9. Despite this amendment, plaintiff has not solicited membership by non-Midas dealers, and a solicitation letter seeking new members, dated November 27, 1975, begins "Dear Fellow Midas Dealer."

10. The plaintiff's principal activities are: (1) acting as a bargaining representative for its members in their dealings with their franchisor, Midas International; (2) the publication of a newsletter; (3) annual conventions; and (4) two insurance programs for its members.

11. The plaintiff's principal accomplishments as a bargaining representative are the gaining of recognition by Midas International; the negotiation of a more favorable franchise agreement; and the elimination of a replacement service charge

imposed upon customers taking advantage of the Midas Muffler guarantee.

12. There is no evidence that plaintiff confers a benefit on the muffler industry as a whole or upon muffler franchisees as a group. Plaintiff's newsletter and other information are disseminated only to Midas dealers, and its bargaining activities, which constitute its most important function, are for the benefit of Midas dealers alone.

13. Midas dealers alone do not constitute a line of business. The Court finds that plaintiff has failed to establish by a fair preponderance of the credible and competent evidence the market share held by Midas International during the years at issue.

14. Plaintiff's evidence demonstrates that, at best, plaintiff has conferred merely an indirect benefit to the public through certain pride reductions and services. There is no evidence of any

direct benefit to the public.

CONCLUSIONS OF LAW

The law applicable to this case has been set forth in the Court's decision on the summary judgment motions; in this Court's judgment, the result herein must be controlled by the decision of the Circuit Court in Produce Exchange Stock Clearing Assn. v. Helvering, 71 F. 2d 142, (2d Cir. 1934) (Swan, J.)

The Produce Exchange decision is the law of this Circuit and that decision binds this Court. Accordingly, the Court rejects plaintiff's contention that this case should be governed by the decision of the Seventh Circuit in Pepsi-Cola Bottlers' Assn. v. United States, 369 F.2d 250 (7th Cir. 1966). Accordingly the Court makes the following further conclusions of law:

1. This Court has jurisdiction of this action under 28 U.S.C. Section

1346(a)(1).

2. To be an exempt business league under Section 501(c)(6) of the Internal Revenue Code, an organization's activities must, during the tax years for which a refund is sought, i.e., 1971, 1972 and 1973, be "directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons." Treas. Reg Section 1.501(c)(6)-1. An organization that "merely serves each member as a convenience or economy in his business" is not a business league. Produce Exchange Stock Clearning Ass'n v. Helvering, 71 F.2d 142, 143-44 (2d Cir. 1934).

3. In the case at bar, the applicable industry is the muffler industry, and the applicable "line of business" is the business of muffler franchisees taken as a whole. Midas Muffler franchisees do not constitute a "line of business" as that term

has been construed by the cases.

4. Since plaintiff's activities during the year in question were not "directed to the improvement of business conditions" in any "line of business" within the meaning of the applicable regulation, and since the plaintiff's activities rendered no direct benefit to the consuming public, plaintiff was not, during the years in question, a "business league" within the meaning of Section 501 (c)(6) of the Internal Revenue Code.

5. Accordingly, the Court concludes that plaintiff has failed to establish the necessary elements of its case by a fair preponderance of the credible evidence.

Judgment should be entered for the defendant the United States of America, dismissing the complaint in all respects with prejudice and costs. Counsel for the

defendant is directed to submit an appropriate order of judgment.

SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of November, one thousand one hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN
Chief Judge

HON. J. JOSEPH SMITH

HON. WILLIAM H. MULLIGAN

Circuit Judges,

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States

District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

By
Deputy Clerk

APPENDIX D

JUDGMENT APPEALED FROM (DISTRICT COURT)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff

- against -

UNITED STATES OF AMERICA,

Defendant.

----------x

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lawrence W. Pierce, United States District Judge, on May 24, 1977, and at the conclusion of the evidence the Court having made findings of fact and conclusions of law in favor of defendant, it is

ORDERED, ADJUDGED and DECREED: That defendant UNITED STATES OF AMERICA have judgment against plaintiff NATIONAL

MUFFLER DEALERS ASSOCIATION, INC. dismiss-

ing the complaint.

Dated: New York, New York
6/6/1977

United States District Judge

APPENDIX

Supreme Court, U. S.
FILED
JUL 27 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED
FEBRUARY 14, 1978
CERTIORARI GRANTED MAY 15, 1978

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • (212) 391-6622

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RELEVANT DOCKET ENTRIES
IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

07-01-75	1. Filed Complaint and Issued Summons.
07-11-75	2. Filed summons with marshals return. Served U.S. ATTY. 7-2-75.
09-11-75	3. Filed stip & order that deft time to answer etc, is extended to 10-2-75, Pierce, J.
10-24-75	4. Filed stip & order that the time for deft U.S.A. to answer is extended to 11-3-75. Pierce, J.
10-30-75	5. Filed defts Jury demand and ANSWER to the complaint. U.S. ATTY.
11-11-75	6. Filed interrogatories and request for documents, by deft, as indicated.
1-9-76	7. Filed stip & order that the time for the pltff to respond to the interrogatories and demand for documents is extended through Jan 15, 1976. Pierce, J.
1-22-76	Filed Pltffs Answers to interrogatories, etc, as indicated.

3-22-76	Filed deft's Affidavit & Notice of Motion, for summary judgment dismissing the complaint, rtble before Pierce, J. on 4-2-76.
3-22-76	Filed defts memorandum of law in support of motion etc, as indicated.
4-5-76	Filed stip & order that the return date of defts motion etc, is extended to 4-23-76. Pierce, J.
4-21-76	Filed Pltffs Affidavit, & Statement purs to Rule 9 G. and Notice of Cross Motion for summary judgment in favor of the pltff, etc, rtble before Pierce, J. on 4-23-76 as indicated.
4-21-76	Filed pltffs memorandum in opposition to defts motion for summary judgment etc, as indicated.
4-23-76	Filed deft reply memorandum of law in support of its motion for summary judgment etc, as indicated.
5-4-76	Filed Order: Since issues of fact cannot be resolved on motions for summary judgment, the cross motions for summary judgment are denied. Pierce, J. M/N.
7-9-76	Filed Stip & Order that the date for renewal for dfts. motion for

summary judgment and pltffs. cross motion for summary judgment is adjourned to 7-27-76. same time & place.....Pierce J

8-2-76 Filed stip & order that the time for renewal of defts motion for summary judgment etc, is extended to 8-30-76. Pierce, J.

9-8-76 Filed stip & order that the date for renewal of the parties respective motions for summary judgment is adjourned to 9-20-76. Pierce, J.

10-19-76 Pre Trial Conference held - Pierce, J.

3-15-77 Filed Govts. proposed findings of fact and conclusions of law.

3-15-77 Filed Govts. trial memorandum of law.

3-15-77 Filed Pltff's proposed findings of fact and conclusions of law.

3-15-77 Filed Pltff's Pretrial order.

3-15-77 Filed Pltffs' Trial memorandum.

3-22-77 Filed Pre-Trial order..... PIERCE, J.

5-24-77 Trial begun & concluded without a jury-Court finds for defendant-

Judgment to be

5-26-77 Filed order transferring proceedings to the suspense docket until further order.....PIERCE, J. m/n

6-6-77 Filed Judgment & Order in favor of deft. dismissing pltff's complaint .....Pierce, m/n. Judgment entered 6-6-77.

6/28/77 Filed notice of appeal to the USCA from the order of J. Pierce dismissing complaint dated 6/6/77 m/n

11-11-77 Filed transcript dated 5-24-77

7-27-77 Filed notice of transmission of record to US Ct.

RELEVANT DOCKET ENTRIES
IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

6-29-77	Filed copies of docket entries and notice of appeal
7-7-77	Received docket fee
7-7-77	Hoffberg, Gordon, Rabin & Engler, Esqs. filed form C
7-7-77	Hoffberg, Gordon, Rabin & Engler, Esqs. tiled form D
7-8-77	Filed affidavit ot service of forms C and D
7-11-77	Filed scheduling order #1, PC
7-12-77	Court reporter filed form D
7-27-77	Filed record (original papers of district court)
8-26-77	Filed brief, appellant, w/pfs
8-26-77	Filed joint appendix, w/pfs
9-20-77	Filed motion to enlarge the time for the filing of appellee's brief, w/pfs
9-23-77	Filed scheduling order #2 (CAMP)
10-11-77	Filed brief, appellee, w/pfs

11-10-77	Argument heard (By: Kaufman, Ch. J., Smith, Mulligan, CJJ)
11-21-77	Judgment affirmed, Kaufman, Ch. J.
11-21-77	Filed judgment
11-29-77	Filed itemized and verified bill of costs, appellee, w/pfs
12-15-77	Filed statement of costs
12-15-77	Issued mandate (opinion, judgment and statement of costs)
12-19-77	Original record returned to district court
2-27-78	Filed notice of filing of petition for writ of certiorari in Supreme Court (S.C.#. 77-1172)
4-27-78	Filed receipt of return of original record to district court.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,	Civil Action No.
Plaintiff,	COMPLAINT
-against-	
UNITED STATES OF AMERICA,	
Defendant.	

1. Plaintiff, National Muffler Dealers Association, Inc., is a Not-For-Profit corporation organized and existing under the laws of the State of New York with its principal office in the State, City and County of New York, said office being in the Southern District of New York.

2. The defendant is the United States of America.

3. This Court has jurisdiction in this action under the provisions of Section 1346(a)(1), Title 28, United States Code (28 U.S.C.A. §1346(a)(1)).

4. This suit is brought to recover Federal Income Taxes erroneously and illegally assessed against and collected from plaintiff by the District Director of Internal Revenue, Holtsville, New York (hereinafter "District Director") acting for and on behalf of defendant, for the plaintiff's fiscal years, 1971, 1972 and 1973.

5. Plaintiff was organized on January 18, 1971. Its purposes are to protect and promote the interests of parties engaged as franchisees in the business of automobile muffler installation and repair, to promote cooperation

among its members and to assist its members in dealing with mutual problems arising from their relationship with their franchisor. Plaintiff's membership, presently numbering , has been confined to those muffler dealers who are Midas Muffler franchisees.

6. On or about December 29, 1971, plaintiff duly filed with the Internal Revenue Service, on IRS Form 1024, an application seeking a tax exemption as a business league, pursuant to Section 501(c)(6) of the Internal Revenue Code. (Copy annexed as Exhibit A.)

7. On March 28, 1972 said application was denied and, after a District Conference had on October 4, 1972, said denial was confirmed by letter dated June 18, 1974.

8. After receipt of said confirmation, the plaintiff did, on July 22, 1974, remit to the District Director tax returns and payments for

the fiscal years, 1971, 1972 and 1973, being in the sums of $1,237.00, $1,431.00 and $2,689.00, respectively. Said payments, totalling $5,357.00, were each made under protest.

9. On September 24, 1974, the plaintiff did timely file with the District Director, on IRS Form 843, claims for refund of said tax payments, asserting that plaintiff's application for exemption as a business league had been erroneously denied. Said claims set forth the reasons for plaintiff's assertion and copies thereof are annexed hereto as Exhibit B. (Rider to Item K thereof was identical on each claim.)

10. By letter dated March 24, 1975, the defendant notified plaintiff that the claim for a refund for fiscal year 1972 had been disallowed. (Copy annexed hereto as Exhibit C.)

11. More than six months have elapsed

since plaintiff filed the aforesaid claims for a refund for fiscal years 1971 and 1973 and it is therefore presumed that said claims have been similarly disallowed.

12. Said disallowances were erroneously made as plaintiff was entitled to tax exemption as a business league pursuant to Section 501(c)(6) of the Internal Revenue Code for the reasons set forth in Exhibit B hereof, which reasons are incorporated herein.

13. As a result of the aforesaid, plaintiff is entitled to a refund of the aforesaid tax payments in the total amount of $5,357.00, plus interest from the date such payments were made. No part of said amount has been refunded to plaintiff, though duly demanded.

14. Plaintiff is the sole owner of the aforesaid claims, having made no assignment thereof.

WHEREFORE, plaintiff demands judgment against the defendant in the total amount of $5,357.00, together with interest and costs provided by law, and such other and further relief as to the Court may seem just and proper.

HOFFBERG, GORDON, FRUTKIN
& RABIN
Attorneys for Plaintiff

By: /s/ Monte Engler
Monte Engler
A Member of the Firm
32 East 57th Street
New York, New York 10022
(212) 355-2650

JURY DEMAND & ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,	:	JURY DEMAND & ANSWER
Plaintiff,	:	75 Civ. 3228 (LWP)
-v-	:	
UNITED STATES OF AMERICA,	:	
Defendant.	:	

Defendant, United States of America, by its attorney Paul J. Curran, United States Attorney for the Southern District of New York, for its answer to the complaint herein:

1. Admits the allegations contained in paragraphs 2, 7, 8, and 10.

2. Denies knowledge or information

sufficient upon which to form a belief as to the truth or falsity of the allegations contained in paragraphs 1, 5, 11, and 14.

3. Denies each and every allegation contained in paragraphs 3, 4, 12, and 13.

4. As to paragraph 6, admits that plaintiff submitted an IRS Form 1024 dated December 29, 1971 which was received by the Manhattan District Director of IRS on February 3, 1972, the contents of which speak for itself.

5. Denies knowledge or information sufficient upon which to form a belief as to the truth or falsity of the allegations in paragraph 9 except admits that plaintiff filed Claim Form 843 dated September 19, 1974 for refund of $1,431.00 for the period from December 1, 1971 to November 30, 1972, which the Manhattan District Director of IRS received on September 25, 1975, and that Exhibit B to the

complaint purports to be copies of the claim forms filed with IRS.

FIRST AFFIRMATIVE DEFENSE

6. This court lacks subject matter jurisdiction over this action.

SECOND AFFIRMATIVE DEFENSE

7. The plaintiff fails to state a claim on which relief can be granted.

WHEREFORE, defendant prays for judgment dismissing this action together with costs and disbursements of this action, and for such other relief as is just and proper.

Dated: New York, New York

October 28, 1975.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendant.

By: /s/ John S. Siffert
JOHN S. SIFFERT
Assistant United States Attorney

Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone (212) 791-1959

To: Hoffberg, Gordon, Frutkin & Rabin
32 East 57th St
NYC 10022
Attn Monte Engler, Esq

ORDER DENYING CROSS-MOTIONS
FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff,

- v -

UNITED STATES OF AMERICA,

Defendant.

75 Civ. 3228

----------x

ORDER

This is an action for a tax refund. Plaintiff contends that it was erroneously assessed taxes for the taxable years ending November 30, 1971, November 30, 1972, and November 30, 1973, totalling $5,357.00. Plaintiff association paid the taxes under protest on

July 22, 1974 and submitted claims for a refund to the Internal Revenue Service. When those claims were denied, plaintiff commenced this action on July 1, 1975. Jurisdiction is based on 28 U.S.C. §1346(a)(1).

Plaintiff contends that it is exempt from taxation because it is a "business league" as defined in Int. Rev. Code of 1964, §501(c)(6), 26 U.S.C. §501(c)(6)(1970), and the regulations thereunder. In this action, plaintiff is urging that the IRS denial of its claim was in error and that it is entitled to a determination that it has no tax liability. Presently before the Court are cross-motions for summary judgment.

Plaintiff is an association of 290 franchised Midas Muffler dealers organized under New York Not-For-Profit Corporation Law §402 (McKinney 1970). The certificate of

incorporation states that plaintiff was formed "to foster and promote the interests of those individuals . . . engaged in business as muffler dealers . . . [and] to advance the trade and commerce of its members . . . ." The original by-laws of plaintiff, dated April 1971, stated that membership was open to "[a]ny muffler dealer holding a valid Midas Muffler franchise . . . ." Art. II §1(a). In addition, membership was to be automatically cancelled "in the event that such member no longer retains a valid Midas franchise . . . ." Art. II §3(b). The by-laws were amended on October 23, 1972 to expand eligibility for membership by eliminating the word "Midas" from the above-quoted provisions. Nevertheless, it is undisputed that the membership of plaintiff consists solely of licensed Midas franchisees and that no effort has been made by plaintiff to

solicit non-Midas dealers for membership.

It is likewise undisputed that plaintiff was formed to provide Midas franchisees with a bargaining representative in their dealings with their franchisor, Midas International, Inc. One concrete accomplishment of the association has been the negotiation of a more favorable twenty year franchise agreement. Plaintiff also holds an annual convention, affords to members two insurance programs, and publishes a Newsletter containing information of general usefulness to Midas dealers.

Section 501(c)(6) of the Internal Revenue Code provides a tax exemption for business leagues. The applicable regulation interpreting this section is found in 26 C.F.R. §1.501(c)(6)-1 (1975), which provides as follows:

> "A business league is an association of persons having some common business interest, the purpose of which is

> to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit . . . . Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

Consequently, the organization claiming the exemption has the burden of proving that its primary purpose is the "improvement of business conditions" in a line of business, (here the muffler industry), rather than the performance of services for its members. The fact that the organization is neither organized for profit nor engaged in a traditionally profit-motivated activity does not by itself establish the exemption. Contracting Plumbers Coop. Restoration Corp. v. United States, 488 F. 2d 684, 688 (2d Cir.), cert. denied, 419 U.S. 827 (1974).

In deciding whether to grant summary

judgment, the Court must determine if any issues of material fact are raised after giving the party against whom the judgment is sought the benefit of all reasonable inferences. The Court on a motion for summary judgment cannot resolve issues of fact. United States v. Matheson, No. 75-6062, slip op. 2279, 2285 (2d Cir. March 3, 1976); Judge v. City of Buffalo, 524 F. 2d 1321, 1323 (2d Cir. 1975); Heyman v. Commerce & Industry Ins. Co., 524 F. 2d 1317, 1319-20 (2d Cir. 1975). As a result of the application of this test, the Court finds that there is an issue of material fact present in this case and thus the cross-motions must be denied.

Both parties have submitted Rule 9(g) statements in which they contend that there are no material issues of fact and that the only question raised is whether as a matter of law

plaintiff is entitled to the exemption. However, an examination of the papers reveals that there is a material dispute as to whether plaintiff's activities result in the improvement of business conditions in the muffler industry generally. Plaintiff contends that "the word 'Midas' is virtually synonymous with mufflers . . . ." As a result, plaintiff contends, "the influence of the Midas chain upon the muffler industry, in general, is pervasive and the activities of the plaintiff have a definite impact upon that industry." (Plaintiff's memo at 10.) In response, the defendant points out that plaintiff's Newsletter is received only by Midas franchisees. As a result, argues defendant, "[i]n no way can its activities be said to have any broader beneficial effect on the 'standards or conditions of a particular trade,' which includes non-Midas muffler dealers or on the community

at large." (Defendant's memo at 10, quoting Produce Exchange Stock Clearing Association v. Helvering, 71 F.2d 142, 144 (2d Cir. 1934)).

Each of the parties' respective positions require underlying findings of fact and neither is supported by the present record. Presently, there is not even any evidence in the record regarding Midas International's share of the market or regarding what proportion of all muffler franchisees belong to the plaintiff's association. A factual determination would be necessary before this Court could determine whether or not plaintiff's activities benefit the muffler industry as a whole. Since issues of fact cannot be resolved on motions for summary judgment, the cross-motions for summary judgment are denied.

SO ORDERED.

Dated: New York, New York
May 3, 1976

/s/ L. W. Pierce
LAWRENCE W. PIERCE
U. S. D. J.

PLAINTIFF'S EXHIBIT 6 - PLAINTIFF'S BY-LAWS DATED APRIL, 1971

BY-LAWS

of

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.

April, 1971

BY-LAWS OF NATIONAL MUFFLER DEALERS ASSOCIATION, INC.

ARTICLE I - PURPOSES

The purposes of this Association are to foster and promote the interests of those individuals, partnerships and corporations who are engaged in business as muffler dealers and installers and related activities, to promote cooperation and mutual interest among its members, to advance the trade and commerce of its members, to encourage the exchange of ideas among its members for their common good and welfare, to secure, classify and disseminate to its members all information essential or helpful in the conduct of their businesses.

The Association shall do anything necessary and proper for the accomplishment of any of the foregoing purposes or any other purpose which may be recognized as a proper and lawful objective of trade associations, all of which shall be consistent with the public interest, as well as in the interests of the members.

ARTICLE II - MEMBERSHIP

Section 1 - Eligibility for Membership

(a) Any muffler dealer holding a valid Midas Muffler franchise shall be eligible for membership.

(b) All shops under common ownership, management or control must be enrolled as members.

Section 2 - Applications For Membership

Applications for membership shall be submitted on

standard forms prepared under the direction of the Board of Directors and shall be accompanied by an enrollment fee fixed by the Board of Directors.

All dealers who are engaged in business as such dealers as of March 1, 1971 and who apply to join the Association after January 1, 1972 shall be required to pay an enrollment fee equal to the total of all dues and assessments payable by members from March 1, 1971. Any dealer who first commences doing business after March 1, 1971 shall, if he joins the Association within twelve (12) months from the date of the commencement of doing business, be required to pay dues only from the date of his application. If, however, such dealer applies to join the Association more than twelve (12) months from the date of commencement of doing business, then he shall pay an enrollment fee equal to all dues and assessments payable by members from the date of the commencement of doing business.

Section 3 - Suspension and Cancellation of Membership

(a) The membership privileges of any member of the Association shall automatically be suspended upon failure of the member to pay any applicable dues or assessments to the Association within a period of sixty (60) days following the date on which such dues or assessments are payable. Immediately upon such suspension, the suspended member shall be notified of the fact of suspension and the amount of the delinquency. In the event that within thirty (30) days from the date of said notice all delinquencies in the account of such suspended member are not cured, such membership shall, upon the expiration of such thirty (30) days' period, automatically be canceled,

provided that the Board of Directors may, at any time prior to the expiration of said thirty (30) days' period, for reasons which in its opinion justifies special consideration, defer such cancellation for such period of time as it deems warranted. In the event that a member has had its membership canceled for non-payment of dues or assessments, then such member shall not be readmitted to membership unless all amounts previously due shall be paid, together with all regular dues and assessments which may have come due during the period the member was not in good standing.

(b) Membership privileges of any member shall automatically be canceled in the event that such member no longer retains a valid Midas franchise; except that if such member's franchise has been canceled and the member is contesting such cancelation, he may continue to retain his membership until the final determination of such contest.

(c) A member may resign at any time; however, any such member requesting readmission to membership in the Association shall not be readmitted to membership unless all dues and assessments coming due during the period when he was not a member shall have been paid.

Section 4 - Voting Rights

(a) In voting for the election of members of the Board of Directors each member shall be entitled to one vote, regardless of the number of shops under the common ownership, management or control of such member.

(b) In all other cases where a membership vote is taken, voting shall be on the basis of one vote per member shop.

ARTICLE III - MEETINGS OF MEMBERS

Section 1 - Annual Meeting

The Annual Meeting of the Association shall be held at such time and place as the Board of Directors may designate.

Section 2 - Special Meetings

Special Meetings may be called by the President at the written request of at least four (4) Directors, and shall be called by the President at the written request of at least twenty-five (25) members.

Section 3 - Notices of Meeting

Notices of all Annual meetings shall be mailed to all members at least thirty (30) days in advance of the date of the meeting. Notices of all Special meetings shall be mailed at least ten (10) days in advance of the date of the meeting. The notice shall specify the date and place of the meeting and the purpose or purposes thereof, to the extent known.

Section 4 - Quorum

At all meetings of members, Special or Annual, the presence of at least twenty-five (25%) per cent of the total number of shops in the Association, whether in person or by proxy, shall constitute a quorum.

Section 5 - Voting by Mail

At any time, the Board of Directors may authorize the submission to the membership by mail ballot of any question

determined by the Directors to be submitted. Such submission and any and all other matters which under these By-Laws may or shall be determined by a mail vote shall be submitted in the following manner:

There shall be mailed to each voting member a ballot upon which each member shall record his or its vote and return it to the office of the Association. On the thirtieth (30th) day following the date of mailing of the ballots, a count shall be made of the votes cast and any ballots not received by said date shall not be counted. Unless at least twenty-five (25%) per cent of the member shops of the Association return their ballots within the aforesaid time period, none of the ballots shall be considered. A majority of the valid ballots submitted shall be necessary for the determination of any question.

Section 6 - Sectional or Regional Meetings

In addition to the Annual and Special Meetings of the members hereinabove provided for, Sectional or Regional Meetings may be called, from time to time, by the Board of Directors.

ARTICLE IV - DIRECTORS

Section 1

The management of the operations and the affairs of the Association shall be vested in a Board of Directors elected from the membership as provided herein. The duties of Directors shall include, but not be limited to, the administration of all Association funds, the management and disposition

of Association property, the formulation of policies of the Association, the determination of disputes in connection with balloting, the determination of the fiscal year of the Association, the election of officers, the recommendation of enrollment fees, dues and assessments, and such other duties as are herein prescribed.

Section 2 - Number and Qualifications of Directors

For the purposes of determining the number of Directors, the country shall be divided into five (5) Regional Territories. Said five (5) Regional Territories shall be designated as, and consist of, the areas hereinbelow provided:

WESTERN REGION

Arizona	Nevada
California	New Mexico
Colorado	Oregon
Hawaii	Utah
Idaho	Washington
Montana	Wyoming
	Alaska

MIDWESTERN REGION

Illinois	Missouri
Indiana	Nebraska
Iowa	North Dakota
Kansas	South Dakota
Michigan	Wisconsin
Minnesota	

SOUTHERN REGION

Alabama	Mississippi
Arkansas	Oklahoma
Florida	Puerto Rico
Louisiana	Texas
	Virgin Islands

SOUTH - CENTRAL REGION

Georgia	South Carolina
Kentucky	Tennessee
Maryland	Virginia
North Carolina	West Virginia
Ohio	Washington, D.C.

NORTHEASTERN REGION

Connecticut	New York
Maine	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont
New Jersey	Delaware

For each full twenty (20) shops in any Regional Territory, the members in that Regional Territory shall be entitled to elect one (1) Director. If, however, there are fewer than twenty (20) shops enrolled as members in any Regional Territory, then the members in that Territory shall nevertheless be entitled to elect one (1) Director, provided that at least five (5) shops in such Territory are enrolled as members.

Section 3 - Term of Office

Upon the election of the first Board of Directors of the Association, one-third (1/3rd) of their number shall be designated to serve for three (3) years, one-third (1/3rd) for two (2) years, and one-third (1/3rd) for one (1) year, such determination to be made by the drawing of lots. Thereafter, as the term of each Director expires, his successor shall be elected for a term of three (3) years.

After a Director has served a full three (3) year term, then he shall not be eligible for re-election to the Board of Directors until the annual election of Directors next succeeding the election for which his successor shall have been elected.

Section 4 - Election by Mail Ballot - Nominating Committee

The President shall appoint a Nominating Committee of five (5) members at least one hundred and eighty (180) days

prior to the date of the Annual Meeting. The Nominating Committee shall nominate one (1) candidate for each vacancy to be filled and shall forward its slate of nominees to the office of the Association at least one hundred and twenty (120) days in advance of the Annual Meeting. The report of the Nominating Committee shall be forwarded to all members. Members may thereafter, but not less than ninety (90) days in advance of the Annual Meeting, make additional nominations of members in their own Regional Territories, provided such nominations are made by not less than five (5) members in that Regional Territory.

Promptly upon expiration of the period for submitting additional nominations, there shall be forwarded, by mail, appropriate ballots to all members in good standing. All ballots must be returned to the office of the Association not later than ten (10) days prior to the Annual Meeting in order to be eligible to be counted. Such ballots shall be retained unopened until the date of the Annual Meeting, at which time they will be handed to tellers duly appointed for the purpose of counting the same. The candidates receiving the greatest number of votes shall be declared duly elected for the offices to be filled. In the case of a tie vote, another ballot shall be taken at the Annual Meeting and all members in good standing from the Regional Territory in which there is a tie vote shall be eligible to cast a ballot in order to break the tie, which ballot shall determine the election without recourse to a further mail vote.

Section 5 - Filling of Vacancies

Whenever any vacancy shall occur on the Board of

Directors by death, resignation or otherwise, the same shall be filled temporarily by a majority vote of the remaining members of the Board from among the members in the voting group represented by the Director whose office became vacant. At the next Annual Meeting of the Association, the vacancy shall be filled and the person so chosen shall hold office for the remainder of the term of the Director whose office became vacant.

Section 6 - Meetings - Quorum

Meetings of the Board of Directors shall be held at the times and places as determined by the Board of Directors. In addition, meetings of the Board may be held on call of the President or at the written request of four (4) Directors. The presence of a majority of the Board of Directors shall be required for a quorum. Notice of all meetings of Directors shall be mailed to each Director at least ten (10) days in advance of the date of meeting, except that in the event of an emergency, Special Meetings may be held on two (2) days' notice by telegram or telephone.

Section 7 - Expenses of Directors - Reimbursement

Each Director shall be reimbursed a Tourist Class (if available) common carrier fare for his travel to and from Board Meetings attended by him during his term of office plus the cost of his hotel room.

Section 8 - Executive Committee

The Board of Directors shall select an Executive Committee, consisting of not less than five (5) members of the Board, who shall have all of the powers of the Board of Directors

between meetings of the Board. However, any action of the Executive Committee shall immediately be submitted for ratification to the entire Board of Directors by mail ballot.

ARTICLE V - OFFICERS

Section 1 - Number

The officers of the Association shall be a President, First Vice-President, Second Vice-President, Secretary and Treasurer, all of whom shall serve without compensation.

Section 2 - How Elected

At its first meeting immediately following the Annual Meeting, the Directors shall elect all of the officers from the membership of the Board of Directors.

Section 3 - Executive Director

The Board of Directors, at its discretion, may employ an Executive Director and/or other staff assistants and counsel, as the affairs of the Association may require.

Section 4 - Compensation

The Executive Director, staff members and counsel may receive such compensation as the Board of Directors may authorize. Officers shall be reimbursed for all expenses incurred by them in connection with the carrying out of their duties.

Section 5 - Disbursement of Funds

All checks drawn on the Association bank accounts must be signed by at least two (2) of the Officers and Executive Director. However, an operating account may be established on which only one of the designated signatures is necessary, and

the Board of Directors may require, in its discretion, that the signatory to such account be bonded, in which event the amount in the operating account shall not at any time exceed the amount of the bond.

ARTICLE VI - DUTIES OF OFFICERS

Section 1 - President

The President shall preside at all meetings of the Board of Directors and at all meetings of the Association. He shall appoint all committees and perform such other duties and functions as custom and parliamentary usage require.

Section 2 - First Vice-President

The First Vice-President shall assume the duties of the President at the latter's request, or in his absence.

Section 3 - Second Vice-President

The Second Vice-President shall assume the duties of the President, if the President so requests it or in the event of his absence, provided that the First Vice-President is absent or incapacitated, and in those cases where the First Vice-President has assumed the duties of the President.

Section 4 - Secretary

The Secretary shall record the Minutes of all meetings of the Association and of the Board of Directors, receive and care for all records, papers and other documents belonging to the Association, and he shall perform all other duties or functions that usually pertain to that position.

Section 5 - Treasurer

The Treasurer shall receive and properly account for all funds of the Association, keep proper records of all receipts and expenditures, and render a complete financial report at the Annual Meeting and at such other times as may be requested by the Board of Directors; he shall deposit all funds of the Association in a checking account or accounts in the name of the Association; he shall pay all bills and other obligations incurred by the Association. He may be required, at the discretion of the Board of Directors, to give bond in such amount as may be directed, the cost of which shall be paid by the Association.

ARTICLE VII - COMMITTEES

All Committees, except those herein specifically provided for, shall be appointed by the President to perform any duties which may be required.

ARTICLE VIII - DUES AND ASSESSMENTS

Section 1

Monthly dues for membership in the Association shall consist of the sum of Ten Dollars ($10.00) per month per shop, payable quarterly in advance.

Section 2

Any and all changes in the dues schedule or any assessments shall be made by the Board of Directors.

ARTICLE IX - AMENDMENTS

The By-Laws of this Association may be amended by a majority vote of the members in good standing. Proposed

amendments must be submitted to the membership in writing at least thirty (30) days in advance of the Special or Annual Meeting at which the proposed amendment will be presented. All members in good standing shall be guaranteed the opportunity to vote on all proposed amendments either by mail or at the time of the Special or Annual Meeting at which the proposed amendment will be presented.

A proposed amendment may be initiated by a majority vote of the Board of Directors or by petition signed by not less than twenty-five (25%) per cent of the member shops in any Regional Territory.

PLAINTIFF'S EXHIBIT 8 - PLAINTIFF'S CERTIFICATE OF INCORPORATION

CERTIFICATE OF INCORPORATION

OF

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.

Under Section 402 of the Not-For-Profit Corporation Law

****

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, hereby certifies:

1. The name of the corporation is NATIONAL MUFFLER DEALERS ASSOCIATION, INC.

2. The corporation has not been formed for pecuniary profit or financial gain and no part of the assets, income or profit of

the corporation is distributable to or inures to the benefit of its members, directors or officers, except to the extent permitted under the Not-For-Profit Corporation Law.

3. The purposes for which the corporation is to be formed are to foster and promote the interests of those individuals, partnerships and corporations who are engaged in business as muffler dealers and installers and related activities in the United States, to promote cooperation and mutual interest among its members, to advance the trade and commerce of its members, to encourage the exchange of ideas among its members for their common good and welfare, to secure, classify and disseminate to its members all information essential or helpful in the conduct of their businesses.

To do any other act or thing incidental to or connected with the foregoing pur-

poses or in advancement thereof.

Nothing contained in this Certificate shall authorize or empower the corporation to perform or engage in any acts or practices prohibited by Section 340 of the General Business Law or other anti-monopoly statute of this State.

4. The corporation is a Type A corporation.

5. The city and county in which its office is to be located are City of New York, County of New York.

6. The territory in which the corporation's activities are principally to be conducted is the United States of America.

7. The post office address to which the Secretary of State shall mail a copy of any notice required by law is c/o Gordon, Frutkin & Rabin, 32 East 57th Street, New

York, New York 10022.

8. The subscriber is of the age of nineteen years of age or over.

IN WITNESS WHEREOF, this Certificate has been signed by the subscriber this 18th day of January, 1971.

/s/ Myron P. Gordon
MYRON P. GORDON
32 East 57th Street
New York, N. Y. 10022

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this 18th day of January, 1971, before me personally came MYRON P. GORDON, to me known, and known to me to be the person described in and who executed the foregoing Certificate of Incorporation, and he duly acknowledged to me that he executed the same.

/s/ Ina Shapiro
INA SHAPIRO
Notary Public, State of New York
No. 31-8938240
Qualified in New York County
Commission Expires March 30, 1972

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MYRON P. GORDON, being duly sworn, deposes and says that he is the subscriber to the annexed Certificate of Incorporation and a member of the firm of BORDON, FRUTKIN & RABIN, attorneys at law; that no previous application for the approval of said Certificate by any Justice of the Supreme Court has ever been made.

Sworn to before me this
18th day of January, 1971 /s/ Myron P. Gordon
MYRON P. GORDON

/s/ Ina Shapiro
INA SHAPIRO
Notary Public, State of New York
No. 31-8938240
Qualified in New York County
Commission Expires March 30, 1972

I, SAMUEL M. GOLD, a Justice of the Supreme Court of the State of New York, of the First Judicial District of the County of New York, hereby approve the foregoing Certificate of Incorporation of NATIONAL MUFFLER DEALERS ASSOCIATION, INC. pursuant to the Not-For-Profit Corporation Law of the State of New York.

Dated, this 22 day of January, 1971."

/s/ Samuel M. Gold
Justice of the Supreme Court
of the State of New York

NO OBJECTION. NOTICE WAIVED

LOUIS J. LEFKOWITZ
Attorney General of
the State of New York

by Percy E. Schuberth
Assistant Attorney General

Dated January 20, 1971

DEFENDANT'S EXHIBIT C - LETTER FROM MONTE ENGLER TO INTERNAL REVENUE SERVICE (11/1/72)

Law Offices
GORDON, FRUTKIN & RABIN
32 East 57th Street
New York, N. Y. 10022

ELdorado 5-2650

MYRON P. GORDON
LEONARD B. FRUTKIN
JACK RABIN

MONTE ENGLER

November 1, 1972

Mr. David Landau
Internal Revenue Service
P.O. Box 3100
Church Street Station
New York, N.Y. 10008

Re: M:AU:CON:A:DL
National Muffler Dealers Association
Application for Exemption

Dear Mr. Landau:

Pursuant to our conversation of this date, this is to confirm that on Monday, October 23, 1972, at the annual meeting of the

National Muffler Dealers Association, the Association's by-laws were amended to read as follows:

ARTICLE II - MEMBERSHIP

Section 1 - Eligibility for Membership

(a) Any muffler dealer holding a valid franchise as such shall be eligible for membership.

(b) No member may enroll or remain as a member unless all shops under said member's ownership, management or control are also enrolled as members.

Section 3 - Suspension and Cancellation of Membership

(b) Membership privileges of any member shall automatically be canceled in the event that such member no longer retains a valid franchise; except that if such member's franchise has been canceled and the member is contesting such cancelation, he may continue to retain his membership until the final determination of such contest.

The amendment being in accord with our understanding of October 11, 1972, I trust that the exemption will be issued shortly.

Mr. Gordon and I wish to thank you for your assistance and cooperation in this matter. I look forward to hearing from you.

Very truly yours,

MONTE ENGLER

ME:dh

DEFENDANT'S EXHIBIT D SOLICITATION OF NEW MEMBERS (11/27/75)

NATIONAL MUFFLER DEALERS
ASSOCIATION, INC.
32 East 57th Street
New York, N. Y. 10022

ELdorado 5-2650

November 27, 1975

Dear Fellow Midas Dealer:

As the new President of the National Muffler Dealers Association, in office less than a month, I would like to take this opportunity to introduce myself.

My name is Howard Lichterman and I have been a Midas dealer since May, 1956. If I equate those 20 years with the age of our country, I have been in the Midas business for 10% as long as this country has been a country. I have been as loyal to the Midas business as I have to our country.

Our Association represents 78% of the franchised shops in the United States. In view of the fact that we are now working closely with Midas International officials in a joint endeavor to improve the Midas program, I believe it is to the interest of every dealer that we have 100% representation. Now, for the first time, there is a genuine partnership between Midas, on the one hand, and the

dealers, represented by our Association, on the other. Shouldn't you be a part of this partnership?

There are a number of areas where Association committees are being set up to assist Midas - at Midas' suggestion - to help make the Midas program an ongoing source of profit for everyone. The areas we are working on consist of:

1. New Products
2. Foreign Car Guarantees
3. Advertising
4. Forms
5. Computer Services
6. Catalogs
7. Pricing
8. Market Research
9. Growth

We need your ideas on these and other vital subjects. You need us because together we will improve your business and its profitability.

Enclosed please find membership application. We will welcome you with open arms. If you have any questions, please feel free to call me at 201-673-3000.

Sincerely,

/s/ Howard Lichterman

HOWARD LICHTERMAN
President

P.S. - We enclose copy of our November Newsletter.

BENCH DECISION OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

(Reproduced as Appendix B to Petition for Writ of Certiorari at pages 8a-15a)

JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

(Reproduced as Appendix D to Petition for Writ of Certiorari at pages 18a-19a)

DECISION OF UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

(Reproduced as Appendix A to Petition for Writ of Certiorari at pages 1a-7a)

JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

(Reproduced as Appendix C to Petition for Writ of Certiorari at pages 16a-17a)

ORDER GRANTING CERTIORARI

SUPREME COURT OF THE UNITED STATES

No. 77-1172

National Muffler Dealers Association, Inc.,

Petitioner,

v.

United States

ORDER ALLOWING CERTIORARI. Filed May 15, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

Supreme Court, U. S.
FILED
MAY 2 1978
MICHAEL RODAK, JR., CLERK

No. 77-1172

In the Supreme Court of the United States

OCTOBER TERM, 1977

NATIONAL MUFFLER DEALERS ASSOCIATION, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

WADE H. MCCREE, JR.,
Solicitor General,

M. CARR FERGUSON,
Assistant Attorney General,

LEONARD J. HENZKE, JR.,
ROBERT T. DUFFY,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (Pet. App. B, pp. 8a-15a) is not officially reported. The opinion of the court of appeals (Pet. App. A, pp. 1a-7a) is reported at 565 F. 2d 845.

JURISDICTION

The judgment of the court of appeals (Pet. App. C, pp. 16a-17a) was entered on November 21, 1977. The petition for a writ of certiorari was filed on February 18, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner, a non-profit corporation whose membership consists entirely of muffler dealers franchised by a single muffler manufacturer, is exempt from federal income tax as a "business league" under Section 501(c)(6) of the Internal Revenue Code of 1954.

STATUTE AND REGULATIONS INVOLVED

Section 501(a) and (c)(6) of the Internal Revenue Code of 1954 (26 U.S.C.) and Treasury Regulations on Income Tax, Section 1.501(c)(6)-1 (26 C.F.R.), are set forth in the Appendix, *infra*, pp. 1a-2a.

STATEMENT

Petitioner was organized in 1971 under the New York Not-For-Profit Corporation Law as a trade association for muffler dealers franchised by Midas International Corporation. At that time, there was a contest for control of Midas, and many of Midas' franchisees formed petitioner in order to establish a united group to deal with the new Midas management. Since petitioner's organization, all of its members have been Midas franchisees, and petitioner has never attempted to recruit dealers who were not Midas franchisees (Pet. App. A, pp. 2a-3a; Pet. App. B, pp. 8a-10a).

Petitioner's principal activity has been to serve as a bargaining agent for its members in their collective dealings with Midas. Petitioner gained recognition by Midas as a representative of its franchisees, negotiated a franchise agreement more favorable to the franchisees, and persuaded Midas to eliminate the requirement that customers pay a service charge when seeking to replace a guaranteed Midas muffler. Petitioner also holds an annual convention, at which issues of concern to Midas dealers are discussed, maintains two insurance programs for its members, and publishes a newsletter (Pet. App. A, p. 3a; Pet. App. B, pp. 10a-11a).

The Internal Revenue Service rejected petitioner's application for tax exempt status as a "business league" under Section 501(c)(6) of the Code. After the Service denied petitioner's claims for refund of $5,357 in taxes for the years 1971-1973, it instituted this suit in the United States District Court for the Southern District of New York (Pet. App. B, pp. 8a-9a).

The district court found that there was no evidence that petitioner benefited the muffler industry as a whole or muffler dealers as a group. As the court observed, "[petitioner's] newsletter and other information are disseminated only to Midas dealers, and its bargaining activities, which constitute its most important function, are for the benefit of Midas dealers alone" (Pet. App. B, p. 11a). Since petitioner's activities were not directed at the improvement of business conditions in "one or more lines of business," as Treasury Regulations, Section 1.501(c)(6)-1, require, the court held that petitioner was not entitled to tax exemption as a business league (Pet. App. B, pp. 11a-14a).

The court of appeals affirmed. In its view, the requirement of the Regulation that a tax-exempt business league devote itself to the improvement of conditions in "one or more lines of business" was reasonable because it insured that the exemption would benefit the general economic welfare rather than private interests (Pet. App. A, pp. 5a-6a).

DISCUSSION

Section 501(c)(6) of the Internal Revenue Code of 1954 provides an income tax exemption for "[b]usiness leagues, chambers of commerce, real-estate boards, [and] boards

of trade * * *." Although the Code does not define the term "business league," Treasury Regulations, Section 1.501(c)(6)-1, state in pertinent part as follows:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. *Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.* * * * [Emphasis supplied.]

The court of appeals held that "[t]he admittedly common characteristic of the organizations enumerated in § 501(c)(6) is that they foster well-being within a broadly-defined segment of the commercial sector" (Pet. App. A, p. 5a). It therefore properly concluded that in enacting Section 501(c)(6), Congress intended "to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests" (*ibid.*). In the court of appeals' view, the "line of business" requirement of the Regulations is "well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community" (*ibid.*; footnote omitted).

Petitioner does not challenge the court of appeals' conclusion that it does not meet the "line of business" requirement of the Regulations. Unlike a chamber of commerce or a board of trade that draws its membership from one or more lines of business, petitioner's members are all franchisees of Midas

International Corporation. Moreover, petitioner's activities do not benefit the muffler industry as a whole but are solely directed to serve the interests of the Midas dealers in their relationship with Midas International. The court of appeals therefore correctly held that petitioner was not entitled to tax-exempt status under Section 501(c)(6) and the "line of business" requirement of the Regulation.

However, petitioner argues (Pet. 10, 17-18) that the decision below conflicts with *Pepsi-Cola Bottlers' Ass'n, Inc.* v. *United States*, 369 F. 2d 250 (C.A. 7). There, a divided panel held that an organization of bottlers of a particular soft drink qualified as a tax-exempt business league despite the fact that its activities were solely directed toward promoting the interests of Pepsi-Cola bottlers rather than the soft drink industry as a whole. Although the court did not expressly invalidate the "line of business" requirement of the Regulation, it concluded that the organization "cannot be disqualified merely because its members all bottle a particular soft drink product" (369 F. 2d at 252). We agree with petitioner that the Seventh Circuit's holding cannot be reconciled with the decision below.[1] Indeed, in rejecting petitioner's claim to tax-exempt status, the court below stated that "[t]o the extent that our holding is in disagreement with the Seventh Circuit's decision in *Pepsi-Cola Bottlers' Assn.* v. *United States*, 369 F. 2d 250 (7th Cir. 1966), we decline to follow the majority opinion in that case" (Pet. App. A, p. 5a n. 1).

Moreover, the Internal Revenue Service advises that the question has some administrative importance. Although there are no pending court cases presenting the

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[1]The Service has announced that it will not follow the *Pepsi-Cola* decision. See Rev. Rul. 68-182, 1968-1 Cum. Bull. 263.

issue, the Service is currently considering 13 ruling applications in which organizations that do not extend membership to an entire line of business are seeking classification as tax-exempt business leagues. It is important that a uniform rule be established to guide the tax bar and the Treasury alike. Accordingly, we do not oppose the petition for a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

M. CARR FERGUSON,
Assistant Attorney General.

LEONARD J. HENZKE, JR.,
ROBERT T. DUFFY,
Attorneys.

MAY 1978.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS. CERTAIN TRUSTS, ETC.

(a) [as amended by Sec. 101(j)(3), Tax Reform Act of 1969, 83 Stat. 526] *Exemption From Taxation.*—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * * * *

(c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):

* * * * *

(6) [as amended by Sec. 6(a), Act of November 8, 1966, 80 Stat. 1515] Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.):

§ 1.501(c)(6)-1. *Business leagues, chambers of commerce, real estate boards, and boards of trade.*

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not

to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income. See part II (section 511 and following), subchapter F, chapter 1 of the Code, and the regulations thereunder.

Supreme Court, U. S.
FILED
JUL 27 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONER

Certiorari has been granted herein to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on November 21, 1977, affirming denial of Petitioner's application for a tax exemption as a "business league" pursuant to Section 501 (c)(6) of the Internal Revenue Code.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 565 F.2d 845 and appears in the petition to this Court for certiorari as Appendix A, page 1a. The opinion of the District Court, issued from the bench on May 24, 1977, has not been reported and appears in the petition to this Court for certiorari as Appendix B, page 8a.

JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 U.S.C. § 1254(1). Petitioner's petition for a writ of certiorari was granted on May 15, 1978 (See 52a).[1]

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

1. 52a-Appendix, page 52.

(a) /as amended by Sec. 101(j)(3), Tax Reform Act of 1969, 83 Stat. 526/ Exemption From Taxation.--An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * * * *

(c) List of Exempt Organizations.--The following organizations are referred to in subsection (a):

* * * * *

(6) /as amended by Sec. 6(a), Act of November 8, 1966, 80 Stat. 1515/ Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.):

§ 1.501(c)(6)-1. Business leagues, chambers of commerce, real estate boards, and boards of trade.

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as

distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income. See part II (section 511 and following), subchapter F, chapter 1 of the Code, and the regulations thereunder.

QUESTION PRESENTED

WHETHER THE INCOME TAX EXEMPTION GRANTED TO "BUSINESS LEAGUES" BY SECTION 501(c)6) OF THE INTERNAL REVENUE CODE IS DEFEATED BY THE FACT THAT ALL MEMBERS OF THE APPLYING ASSOCIATION HOLD A FRANCHISE FROM THE SAME FRANCHISOR.

STATEMENT OF THE CASE

Petitioner is a trade association comprised of muffler dealers throughout the country, all of whom are franchisees of Midas International Corp., - "Midas Muffler" dealers. Organized on January 8, 1971 under the New York

Not-For-Profit Corporation Law, petitioner sought, and ultimately received, recognition from Midas as a bargaining agent of the franchisees. The entire purpose of the association has been to redress the traditional economic imbalance inherent in the franchisor-franchisee relationship. (R. 35, CA 49)[2]

Other functions of the association include publication of a newsletter advising members of developments in relations with the franchisor and serving as a forum for the exchange of information and ideas and conducting an annual convention which addressed problems common to the members. (R. 30, CA 44) Petitioner's membership is comprised of Midas franchisees with approximately 620 shops, representing 81% or 82% of the Midas shops in the country. (R. 33, CA 47)

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2. R. 35-Record of District Court Transcript, page 35; CA 49- Court of Appeals Joint Appendix, P. 49).

The purposes of the petitioner association, however, are also well articulated in Article I of its by-laws:

> The purposes of this Association are to foster and promote the interests of those individuals, partnerships and corporations who are engaged in business as muffler dealers and installers and related activities, to promote cooperation and mutual interest among its members, to advance the trade and commerce of its members, to encourage the exchange of ideas among its members for their common good and welfare, to secure, classify and disseminate to its members all information essential or helpful in the conduct of their business.
>
> The Association shall do anything necessary and proper for the accomplishment of any of the foregoing purposes or any other purpose which may be recognized as a proper and lawful objective of trade associations, all of which shall be consistent with the public interest, as well as in the interest of the members. (27a)

Petitioner seasonably sought exemption as a business league pursuant to Section 501(c)(6), which exemption was denied by the Internal Revenue Service (IRS). Having thereafter exausted its administrative remedies, paid the taxes under protest and complied with

all prerequisites to an action for a refund, this action was commenced in the District Court for the Southern District of New York on July 1, 1975. (Complaint, without exhibits, appears at 7a) Jurisdiction of the District Court was based upon 28 U.S.C. § 1346(a)(1). After a trial before Hon. Lawrence W. Pierce on May 24, 1977, the complaint was dismissed. (51a) By decision dated November 21, 1977, the judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit. (51a)

The essential contention of the petitioner is that it is a "business league" entitled to the exemption conferred by Congress. The respondent contends essentially that the exemption is lost because petitioner's members are all franchisees of one franchisor and do not, therefore, constitute a "line of business" as contemplated by the pertinent IRS regulation.

In affirming the dismissal of petitioner's action, the Second Circuit, in essence, has adopted the respondent's contention.

SUMMARY OF ARGUMENT

Appellant contends that it has been improperly denied the income tax exemption granted to "business leagues" by Section 501 (c)(6) of the Internal Revenue Code. The basis of the denial is that all members of the Appellant association hold a franchise from one common franchisor. Appellant contends that such fact cannot defeat the exemption.

Congress has nowhere defined the term "business league" and neither the legislative history nor the rationale for the exemption justifies withholding the exemption from a trade association, the membership of which is limited to franchisees with a common franchisor. The members of such an association

have a common problem not shared by others who may be involved in the same business.

Much as employees joined together in labor unions to assist them in creating an economic balance vis-a-vis their employers, the franchisee has been forced to join together with others so that he is not overwhelmed by the economic might of the franchisor. The business league exemption was granted by Congress long before the existence of franchisee associations and, undefined in the legislation, the term was clearly intended to be sufficiently flexible to encompass within its meaning an organization such as an association of franchisees.

The franchisee association enables the individual franchisee to establish an effective economic counterbalance against the large, all-powerful franchisor. This balancing of economic power is clearly in furtherance of the economic public policy

of the United States and was intended by Congress to be encouraged.

ARGUMENT

Section 501(c)(6) of the Internal Revenue Code (IRC) provides an exemption from income taxation for the following entities:

> Business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players)[3]

It needs no elaboration to state that statutes and their supporting regulations must be read in the light of the objects sought to be achieved by Congress. In interpreting legislation, the courts must be vigilant against narrow adherence to specific regulatory language which obviously was never intended

3. As earlier stated, the football league language was not added until 1966. The significance of this fact is discussed infra at p. 24.

to apply to the facts of a case such as this.

In assessing the statutory grant of exemptions within Section 501(c)(6), the Second Circuit concluded that, "...it is the manifest intention of Congress in § 501(c)(6) to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests." (Petition for Certiorari, Appendix A, p. 5a). The court then addressed itself to the language of the supporting regulation which states that the activities of a business league "...should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons." Treas. Reg. 1.501(c)(6)-1, as cited by Court. (Pet.App.A, p.5a) (Emphasis by Court). Placing its imprimatur upon the quoted language of the regulation, the Court found that the "line of business" requirement contained therein "is well suited

to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community." (Pet.App.A, p.5a).

From these dual premises, the Court proceeded to affirm denial of petitioner's requested exemption: "Applying the 'line of business' requirement with a sensitivity to the general considerations which underlie it, we have little difficulty in concluding that the Association does not merit an exemption." (Pet.App.A, p.6a) The essential reason for that conclusion, however, appears to be the finding of the District Court that petitioner "...failed to establish that it conferred any benefit on muffler dealers in general. And even if the Association was able to make such a showing, the industry-wide benefit would be purely incidental to the organization's primary purpose-improving conditions for Midas dealers- and thus an insufficient basis for awarding an exemption." (Pet.,App.A, pp.6-7a)

With all due respect, we submit that the interpretation placed by the Court of Appeals upon the statutory grant of the business league exemption is far too narrow and would, if affirmed by this Court, have the effect of denying the exemption to an entire class of organizations clearly intended by Congress to benefit therefrom. There is a genuine need for associations of franchisees who must deal with common problems which are shared by no one else and, although the term "franchisee association" does not appear in the statute, the entire statutory scheme by which Congress has chosen to confer tax exemptions leaves little doubt that the term "business league" properly encompasses within its terms precisely such associations as the petitioner. In this regard, it is imperative to recognize that, enacted in 1913, Section 501(c)(6) (as well as the Treasury Regulation subsequently promulgated with respect thereto) was promulgated before franchising was even known and long before it had become, as it

now has, an integral part of the American economy.

The term "business league" first found its way into the statutory scheme established by Congress in 1913 when it was added, along with other business-oriented groups, into the section granting tax exempt status to other types of organizations:

> The House provision exempting from tax, labor, agricultural or horticultural organizations, mutual savings banks, and fraternal beneficiary societies is extended to business leagues, chambers of commerce, or boards of trade not organized for profit and to civic organizations operated exclusively for the promotion of social welfare.
> Report, Conference Committee (63d Cong., 1st Sess., H.Rept.86,p.26)

Surely the inclusion of these business-oriented organizations (business leagues, chambers of commerce, boards of trade) must be regarded as reflective of a public policy to encourage formation of such organizations. What is revealed upon analyzing the makeup of the

enumerated encouraged groups is that they are all comprised of businessmen grouping together to accomplish valid business goals which they could not accomplish by themselves. Undefined in the statute, the term "business league" was surely intended by Congress to be sufficiently flexible to encompass organizations, such as franchisee associations, not then conceived. In fact, one does not find the term "trade association" within the statute, yet trade associations are routinely granted tax exempt status as business leagues.

Indeed, the business league exemption has been granted to a number of diverse groups, including, for example: groups of businessmen whose sole common interest was to deal with legislation to improve their competitive standing in the respective businesses in which they were engaged (Rev.Rul.61-177, 1961-2 Cum. Bull.117); groups of businessmen with a common interest in dealing with labor unions representing their employees (Rev.Rul.65-164, 1965-1 Cum. Bull.238); and groups of employees with a common

interest in dealing with their employers (IRC § 501(c)(5)). In each such instance, the function of the exempt organization was to perform an activity beneficial to its members which those members could not effectively perform alone.

We are unable to fathom the strenuous opposition of the Internal Revenue Service to the requested exemption. The IRS routinely grants the business league exemption to groups of businessmen whose essential function is to collectively bargain with the unions representing their employees. Would the Second Circuit find in these exemptions a promotion of "some aspect of the general economic welfare" but fail to find such benefit when businessmen join together to collectively bargain with their common franchisor? In both instances, there exists the same benefit to the businessman- an equalization of his individual bargaining power. In the first instance his joint activity helps him to equalize his bargaining

power with the large and powerful labor union with whom he must deal. In the second instance, he is assisted in gaining bargaining parity with the large and powerful franchisor with whom he must deal. No valid reason exists to grant him the exemption in the first instance while withholding it in the second.

In National Labor Relations Board v. Truck Drivers Local Union 449, 353 U.S. 87 (1957), after noting that "Approximately four million employees are now governed by collective bargaining agreements signed by unions with thousands of employer associations...", Mr. Justice Brennan, speaking for unanimous court, went on to recognize that Congress has encouraged multi-employer bargaining as a means of strengthening the collective bargaining process in furtherance of a public policy promoting industrial peace. 353 U.S. at 95. Is there any question that the "thousands of employer associations" formed to bargain with the labor unions pursuant to

this public policy are entitled to a tax exemption? Are businessmen to be given encouragement to equalize their bargaining power vis-a-vis a countervailing force of employees but denied the same encouragement when they must bargain with an equally powerful franchisor? We submit that the answer to these questions must be "no" and that Congress could have intended no such inconsistency.[4]

In Crooks v. Kansas City Hay Dealers' Association, 37 F.2d 83, 85 (8th Cir. 1929), in affirming a business league exemption granted to a different type of association, the Eighth Circuit properly observed, "/The Government/ ... contends that Congress intended to exempt only such organizations as were

4. So, too, it would be inconsistent to assume that Congress has granted to employees the right to collectively bargain with their common employer through tax exempt labor unions (IRC § 501(c)(5)) but that it has denied the same right to franchisees who must bargain with their common franchisor. The analogy between employee-employer and franchisee-franchisor is compelling.

devoted entirely to the general public welfare. Congress did not so say." That this is so is buttressed by the grant of the exemption to the diverse groups mentioned above. Surely a group of employers organized to bargain with a labor union is not "devoted entirely to the public welfare" but seeks to benefit its members as well.[5]

This is not to say, however, that Congress did not expect some type of public benefit to flow from its grant of the business league exemption for, certainly, an exemption is conferred by Congress only in pursuit of a national public policy. In the case of the business league, the encouragement of businessmen to join together to accomplish goals which

5. Certainly members of petitioner are benefited by membership. This, however, cannot militate against the exemption. As the District Court recognized in Omaha Live Stock Traders Exchange v. U.S., 244 F.Supp. 384, 387 (Neb. 1965), "Human experience has taught us that few men would join an organization if they did not derive at least some benefit out of it."

they could not accomplish by themselves was, we suggest, directed at the creation of an economic environment favorable to the individual entrepreneur, traditionally regarded as the backbone of the American economy. This is precisely the role of the franchisee association, which gives to the individual entrepreneur encouragement to enter into business rather than being discouraged by the inherently unequal economic power between the individual franchisee and the monolithic franchisor. This creation of an economic balance between opposing forces militates against excessive consolidation of economic power and is thus consistent with the philosophy and public policy underlying this country's antitrust and labor relations laws.

The creation of this economic balance is, we submit, clearly within the type of public benefit which Congress contemplated would flow from its creation of tax exempt business organization. Nonetheless,

though this type of benefit would seem clearly to fulfill the Second Circuit's search for promotion of "some aspect of the general economic welfare," the Court proceeds to affirm denial of the exemption because of the District Court's finding that appellant "... failed to establish that it conferred any benefit on muffler dealers in general." (Pet. App.A, pp.6-7a)[6]

In Pepsi-Cola Bottlers' Association v. United States, 369 F.2d 250 (2d Cir. 1966),

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6. In fact, appellant offered evidence at trial to show that Midas' dominance in the muffler industry was such that advances made by Midas dealers had impact throughout the industry. (R.98-102, CA 112-116) The Court precluded introduction of certain other evidence which would have shown that other muffler dealers followed suit when Midas dealers received permission from their franchisor to eliminate a service charge previously imposed on the public. (R.36-40, CA 50-54) The Court below ignored appellant's contention that such preclusion was error, finding that the exemption could not be granted even if appellant had demonstrated that it conferred a benefit on the muffler industry in general. (Pet.App.A, p.7a)

the Seventh Circuit affirmed a judgment granting the business league exemption to a trade association comprised solely of individuals, firms or corporations engaged in the bottling and a sale of a single product. In that case, the Court stated, at 252:

> The plaintiff association cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute and regulations a limitation wholly unsupported by the legislative history. (emphasis added)

This is, however, precisely what the decision of the Second Circuit herein attempts to do.[7]

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7. Discussing Pepsi-Cola, the Second Circuit stated merely, in a footnote, that to the extent that its holding was in disagreement with that of the Seventh Circuit, "...we decline to follow the majority opinion in that case." (App.A, p.5a) In so stating, the Court noted, properly, that the IRS has also stated that it would not follow the Pepsi-Cola decision. Rev. Rul. 68-182, 1968 Cum.Bull. 263. It is well recognized, however, that Revenue Rulings are not law and are not in any way binding on the courts. Mercantile Bank & Trust Co. v. U.S., 312 F. Supp. 1164, aff'd. 441 F.2d 364 (8th Cir. 1970).

That Court has, we believe, permitted itself to become embroiled in a myopic reading of precedent that has little bearing on the facts of this case and that never properly considered the intent of Congress in creating the exemption in question.

Recognizing that the statute itself does not attempt to define "business league", the Second Circuit, as it did in Produce Exchange Stock Clearing Ass'n. v. Helvering, 71 F.2d 142 (2d Cir. 1934), has relied upon the doctrine of noscitur a sociis and has thus sought to define "business league" by "looking at the general characteristic which the Court finds in Section 501(c)(6) is the fostering of well-being "...within a broadly-defined segment of the commercial sector." (Pet. App.A, p.5a)[8]

---

8. In Produce Exchange, the Court affirmed denial of the business league exemption finding that "...petitioner's activities are solely for the direct benefit of its so-called 'clearing members'..." and that

It is from this starting point that the Court finds within the statute the requirement that the exempt organization "promote some aspect of the general economic welfare." The Court, however, failed to address itself to the fact, raised before it by appellant, that Congress has included within the organizational grouping in the statute "professional football leagues (whether or not administering a pension fund for football players)." We strongly question whether <u>any</u> of the other

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8. (Cont'd) such activities were "...simply to provide a business economy or convenience for individual traders." (71 F.2d at 144) In fact, denial of the exemption to other trade associations has generally been due to the fact that the collective action of the individual members was apparently aimed solely at increasing the profits of its members through a business economy or convenience. We find no difficulty with this line of cases, but submit that they are irrelevant in assessing the entitlement of the appellant, whose activities have a significantly different purpose. See, e.g., <u>United States v. Omaha Live Stock Traders Exchange</u>, 366 F.2d 749 (8th Cir. 1966); <u>General Contractors' Ass'n of Milwaukee v. U.S.</u>, 202 F.2d 633 (7th Cir. 1953).

organizations grouped in Section 501(c)(6) (boards of trade, chambers of commerce, real estate boards) possesses the "general characteristics of a football league." Regardless, however, it is certain that the "general economic welfare" test espoused by the Second Circuit is satisfied <u>at least</u> as well by a nationwide franchisee association as by a football league.

Quite simply, appellant believes that a business league is properly defined in the first sentence of the applicable Treasury Regulation:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

The subsequent language of the regulation is, we submit, clearly intended to be illustrative only. Focusing upon the "line of business" language in the third sentence, as the Second

Circuit has done (Pet.App.A,p.5a), so as to make "line of business" a prerequisite for the exemption,ignores the fact that "business conditions" can be improved for large numbers of franchised businessmen even if together they do not engage in a "line of business." The Court's reliance upon this regulatory language ignores the very real public policy behind the creation of the business league exemption.

As has been noted throughout this case, the advent of franchising on a major scale is a relatively new economic development in the United States, fraught with problems for the franchisee which were not contemplated when Section 501 was enacted. For example, appellant introduced testimony that prior to the negotiation of a new franchise agreement by the appellant, the individual Midas franchisee, after having invested a significant amount of money and effort in his franchise,

was subject to having that franchise terminated by Midas upon 30 days notice. (R. 23, CA 37) Certainly the negotiation of a new agreement providing for a twenty year term, cancellation only for cause, an arbitration clause in the event of dispute and other benefits (R. 24, CA 38) went a long way towards encouraging the entrepreneurial efforts of those already in or contemplating entry into the business, in accordance with the public policy discussed at length above.

Moreover, as additional testimony made clear (R. 45-47, CA 59-61), franchisee associations such as the appellant serve to counter the numerous economic abuses frequently perpetrated by the franchisor, such as price fixing, forced purchase from suppliers designated by the franchisor and unjust termination. Appellant's activities are specifically directed to redressing this traditional economic imbalance on behalf of its members.

It is clear that the relatively recent advent of franchising on a major scale has brought with it its own set of unique problems affecting both the franchisee and the public. The formation of associations of franchisees who must deal with a common franchisor - their "common business interest" as required in the regulation - is nothing more than the natural outgrowth of this development, just as the formation of labor unions was a direct outgrowth of the common problems faced by employees forced to deal with large employers who were notoriously insensitive to their needs.

Indeed, that franchisee associations serve a very real and recognized public interest cannot be denied. A model statute, entitled the Franchise Fair Dealing Act, which has been introduced in a number of states, provides:

> Franchisees shall have the right to association and to select a collective bargaining agent of their own choosing

> to negotiate and deal with franchisors on matters having to do with their franchise relationship.

Moreover, a number of states have already passed legislation specifically prohibiting a franchisor from in any manner, directly or indirectly, interfering with the right of free association among franchisees for any lawful purpose. See, e.g., Franchise Practices Act, N.J.S.A., 56:10-7(b)(Chapter 356)(New Jersey); Franchise Investment Protection Act, Wash.S.A., Chapter 252, Sec. 18(2)(b)(Washington); Franchise Investment Law, M.C.L.A. § 445.1401 et.seq. (Mich.)

The courts, too, have seen the need:

> One of the traditional control mechanisms of a franchisor has been to keep its franchisees disorganized. Franchisees, by necessity, must have access to the franchise group in order to act together to deal with common problems, whether those problems be the oppressiveness of the franchisor or some less momentous concern.
> McAlpine v. AAMCO Automatic Transmissions, Inc. (D.C. Mich. 1978) 1978-1 Trade Cases ¶ 70,593 (not officially reported).

What is clear from all this is that the existence and protection of franchisee associations such as the appellant, seeking to establish an economic balance and preclude the franchisors' abuses, is clearly recognized as being necessary for franchisees and being in the public interest. Their existence goes far towards assuring that the economic power of the large, monolithic franchisor is held in check by a countervailing economic force, a valid goal which, quite patently, is clearly something the franchisees could not accomplish without joining together for the purpose. They seek not to profit by these activities, but to protect themselves.

The Second Circuit, however, has stated that even if the public interest served by franchisee associations is recognized, it is to Congress that they must turn to seek tax exemption. (Pet.App.A, p.7a) We respectfully suggest, however, that no reason exists to seek from Congress that which it has already granted.

We contend that the term "business league" contains sufficient flexibility to respond to the dynamics of our economy by recognizing the association of franchisees as already properly within its scope. Indeed, we suggest that Congress, intending the term to have such flexibility, purposely did not restrict it with definitively binding language which might have precluded the grant of an exemption to an organization such as plaintiff.[9]

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9. It is interesting to note that in the Kansas City Hay Merchants case, supra, p. 18, the Eighth Circuit seemed to recognize the broad spectrum of organizations which could be classified as a "business league." In searching for a definition, the Court looked to the definitions of its components "'Business' is defined in Black's Law Dictionary as follows: 'Business is a very comprehensive term and embraces everything about which a person can be employed,' which definition is approved by the Supreme Court /citation/ ... 'League' is defined in Webster's New International Dictionary as 'an agreement or covenant between two or more nations, parties, or persons for the accomplishment of some purpose by their cooperation.'" 37 F.2d at 85.

No new statute is needed as the exemption for franchisee associations is already contained in the existing law. Indeed, until the Second Circuit's decision below, the only case dealing with this issue was Pepsi-Cola Bottlers' Association v. U.S., op.cit., supra, at page 21 which so held. In view of that existing precedent, assuming Congress had inquired into the matter, it would have perceived no necessity for new legislation.

CONCLUSION

Denial of the business league exemption to the appellant has served to withhold the exemption from precisely the type of organization for which Congress intended it. For all the reasons set forth above, the judgment of the Court below should be reversed and a judgment should be entered setting aside the appellee's denial of the

requested exemption and directing that such exemption be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1978

NATIONAL MUFFLERS DEALERS ASSOCIATION, INC.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1172

NATIONAL MUFFLERS DEALERS ASSOCIATION, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The findings of fact and conclusions of law of the district court (Pet. App. B, pp. 8a-15a) are not officially reported. The opinion of the court of appeals (Pet. App. A, pp. 1a-7a) is reported at 565 F.2d 845.

JURISDICTION

The judgment of the court of appeals (Pet. App. C, pp. 16a-17a) was entered on November 21, 1977.

The petition for a writ of certiorari was filed on February 18, 1978, and was granted on May 15, 1978 (A. 52a). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an organization whose activities are directed solely toward the performance of services for the franchisees of a particular brand of a product, rather than the improvement of business conditions of those who deal in any brand of the product, is exempt from income tax as a "business league" under Section 501(c)(6) of the Internal Revenue Code of 1954 and the applicable Treasury Regulations.

STATUTE AND REGULATION INVOLVED

Section 501(a) and (c)(6) of the Internal Revenue Code of 1954 (26 U.S.C.), and Treasury Regulations on Income Tax, Section 1.501(c)(6)-1 (26 C.F.R.), are set forth in the Appendix, *infra*, pp. 36-38.

STATEMENT

1. Petitioner was organized in 1971 under the New York Not-For-Profit Corporation Law[1] as a trade association for muffler dealers franchised by Midas International Corporation. At that time, there was a contest for control of Midas, and many of Midas' franchisees organized petitioner in order to establish

[1] See New York Not-For-Profit Corporation Law § 402 (McKinney 1970) (A. 18a).

a united group to deal with the new Midas management (Pet. App. A, pp. 2a-3a; Pet. App. B, pp. 8a-10a).

Petitioner's articles of incorporation stated that it was formed "to foster and promote the interests of those individuals * * * engaged in business as muffler dealers * * * [and] to advance the trade and commerce of its members * * *" (A. 19a; Pltf. Ex. 8, A. 41a). However, petitioner's original by-laws adopted in April 1971 provided that only muffler dealers holding a valid Midas Muffler franchise were eligible for membership (A. 26a-27a). As part of its effort to obtain status as a tax-exempt business league, petitioner amended its by-laws on October 23, 1972, to permit "[a]ny muffler dealer holding a valid franchise as such [to] be eligible for membership" (A. 46a-47a).

Despite this amendment to its by-laws, petitioner has never broadened its membership to include non-Midas dealers. Throughout its history, petitioner has never had any member who is not a Midas Muffler franchisee. Moreover, petitioner has never attempted to solicit membership outside the Midas chain and recruit non-Midas dealers. A letter seeking new members sent by petitioner's president on November 27, 1975, contained the greeting "Dear Fellow Midas Dealer" (Pet. App. A, p. 3a; Pet. App. B, pp. 9a-10a). In that letter, petitioner's president, who was a Midas dealer himself, further stated: "In view of the fact that we are now working closely with Midas International officials in a joint endeavor to improve

the Midas program, I believe it is to the interest of every dealer that we have 100% representation. Now, for the first time, there is a genuine partnership between Midas, on the one hand, and the dealers, represented by our Association, on the other" (A. 49a-50a).

During 1971-1973, the years in question, approximately 290 (50 percent) of all Midas dealers were members of petitioner. As a result of petitioner's subsequent efforts, almost 80 percent of all Midas dealers had been enrolled by the end of 1975 (Pet. App. A, p. 3a; A. 18a, 49a). However, the bulk of the muffler industry continued to be excluded from petitioner's membership. This fact was confirmed by a survey undertaken at the request of petitioner and Midas that indicated that Midas dealers received only 21 percent of the replacement muffler business in 18 major metropolitan markets (Pet. App. A, p. 6a and n. 2).[2]

Since petitioner's organization, its principal activity has been to serve as a bargaining agent for its members in dealing with Midas. For example, petitioner negotiated a new franchise agreement, which petitioner's executive director characterized as

[2] Prior to trial, the district court denied both parties' motions for summary judgment on the ground that there was then as yet no evidence "regarding Midas International's share of the market or regarding what proportion of all muffler franchises belong to [petitioner]" (A. 24a). The court therefore concluded that "[a] factual determination would be necessary * * * [so that it] could determine whether or not [petitioner's] activities benefit the muffler industry as a whole (*ibid.*).

"almost a model franchise agreement." While the former franchise agreement could be canceled upon 30 days' notice, the new agreement had a 20-year term and could not be canceled except for cause. It also gave Midas dealers the right to sell the franchise, subject to Midas' approval of the buyer, and provided for succession in the event of the death of the dealer. Under the new agreement, disputes in these matters were made subject to arbitration (Pet. App. A, pp. 2a-3a; Pet. App. B, p. 10a; Tr. 21-25[2a]).

Petitioner also persuaded Midas to eliminate the practice that customers pay a service charge when seeking the otherwise free replacement of a guaranteed Midas muffler. Under the previous practice, Midas dealers applied the service charge against the cost of the replacement muffler; however, under the new agreement, Midas reimbursed the dealer for 95 percent of the cost and has eliminated the service charge. Petitioner also achieved a reduction in the prices that Midas charged the dealers for pipe, and obtained a commitment from Midas that its pipe prices would remain competitive. Petitioner thereafter monitored by computer the prices of Midas pipe and the competitors' prices, in order "to make sure that they are competitive and that they are kept low within the market" (Pet. App. A, p. 3a; Pet. App. B, pp. 10a-11a; Tr. 25-28).

Petitioner's activities also included the sponsorship of a group life and health insurance program, and a group casualty and workers' compensation program. These programs were available at reduced

[2a] "Tr." refers to the trial transcript.

cost to Midas dealers who are members. Petitioner also held an annual convention, at which issues of interest to Midas dealers are discussed, and sent periodic newsletters to its members (Pet. App. A, p. 3a; Pet. App. B, p. 10a; Tr. 29-30).

2. The Internal Revenue Service rejected petitioner's application for tax-exempt status as a "business league" under Section 501(c)(6) of the Code. After the Service denied its claims for refund of $5,357 in income taxes for the years 1971-1973, petitioner instituted this suit in the United States District Court for the Southern District of New York (Pet. App. B, pp. 8a-9a; A. 7a-12a).

The district court found that "there [was] no evidence that petitioner confers a benefit on the muffler industry as a whole or upon muffler franchisees as a group" (Pet. App. B, p. 11a). As the court observed, "[petitioner's] newsletter and other information are disseminated only to Midas dealers, and its bargaining activities, which constitute its most important function, are for the benefit of Midas dealers alone" (*ibid.*). The court also found that Midas dealers alone do not constitute a line of business because the applicable industry is the muffler industry and the applicable line of business is the business of muffler franchises taken as a whole. Since Treasury Regulations, Section 1.501(c)(6)-1 requires that a tax-exempt business league's activities be directed at the improvement of business conditions in "one or more lines of business," the district court held that petitioner was not entitled to tax exemption as a business league (Pet. App. B, pp. 11a-14a).

The court of appeals affirmed (Pet. App. A, pp. 1a-7a). It agreed with the district court that petitioner does not benefit an entire line of businesses as required by the Regulations, and therefore did not merit tax-exempt status. In the absence of an explicit statutory definition of "business league," the court of appeals examined the general characteristics of the organizations included with business leagues under Section 501(c)(6) exemption. In its view, the fact that the statute also exempted chambers of commerce and boards of trade showed that Congress intended to limit the Section 501(c)(6) exemption to those organizations that promote some aspect of the general economic welfare rather than some particular private interest.

In so ruling, the court explicitly refused to follow the contrary decision in *Pepsi-Cola Bottlers' Assn., Inc.* v. *United States*, 369 F.2d 250 (C.A. 7), which upheld the exempt status of an association composed solely of bottlers of a single brand of soft drink on the ground that the "line of business" requirement of the Regulation had no support in the statute (Pet. App. A, p. 5a n. 1). The court held that the requirement of the longstanding Treasury Regulation that a tax-exempt business league devote itself to the improvement of conditions in "one or more lines of business" reasonably implements the statute by insuring that the exemption benefits a sufficiently broad segment of the business community (Pet. App. A, pp. 4a-6a).

SUMMARY OF ARGUMENT

1. Section 501(c)(6) of the Internal Revenue Code of 1954 provides an income tax exemption for "[b]usiness leagues, chambers of commerce, real-estate boards, [and] boards of trade * * *." Although the Code does not define the term "business league," Treasury Regulations, Section 1.501(c)(6)-1, states in pertinent part as follows:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. *Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.* * * * [Emphasis supplied.]

The legislative history of Section 501(c)(6), which was first enacted in 1913, confirms the correctness of the court of appeals' holding that "[t]he admittedly common characteristic of the organizations enumerated in § 501(c)(6) is that they foster well-being within a broadly-defined segment of the commercial sector" (Pet. App. A, p. 5a). The submissions to Congress for exemption were on behalf of chambers of commerce and boards of trade and the legislative evidence supports limiting the Section 501(c)(6) exemption to those organizations that resemble chambers of commerce or boards of trade. Thus, a tax-exempt business league must benefit a broad spectrum of the business of a geographic area or a particular industry.

The decision below therefore properly concluded that in enacting Section 501(c)(6), Congress intended "to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests" (*ibid.*). As the court of appeals observed, the "'line of business'" requirement of the Regulations is "well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community" (*ibid.*; footnote omitted). Indeed, the "line of business" requirement has been in the Regulations since 1929 and has stood without change through many successive reenactments of the statute. The decisions of this Court have long held that such a Treasury Regulation is entitled to great weight in construing the statute and must be sustained unless unreasonable and plainly inconsistent with the statute. See, *e.g.*, *Bingler* v. *Johnson*, 394 U.S. 741, 749-750; *Helvering* v. *Winmill*, 305 U.S. 79; *Lykes* v. *United States*, 343 U.S. 118.

2. Petitioner does not challenge the validity of the Regulation or the court of appeals' conclusion that it does not meet the "line of business" requirement of the Regulation. Unlike a chamber of commerce or a board of trade that draws its membership from one or more lines of business, petitioner's members are all franchisees of Midas International Corporation

engaged in the sale and service of Midas Mufflers. Moreover, petitioner's activities do not benefit the muffler industry as a whole but are solely directed toward serving the interests of Midas International and the Midas dealers in their relationship with their franchisor. The court of appeals therefore correctly held that petitioner was not entitled to tax-exempt status under Section 501(c)(6) and the "line of business" requirement of the Regulation.

In urging that it is entitled to exemption as a business league, petitioner argues that the "line of business" requirement of the Regulation is merely illustrative of the overriding provision in the first sentence that the organization promote the common business interest of its members. But the courts have consistently held that the "line of business" requirement is one of several independent conditions each of which must be met in order to qualify for exempt status. Petitioner's construction would effectively read the line of business requirement out of the Regulation.

3. The court of appeals correctly declined to follow the contrary decision in *Pepsi-Cola Bottlers' Assn., Inc.* v. *United States*, 369 F.2d 250 (C.A. 7). There, a divided panel held that an organization of bottlers of a particular soft drink qualified as a tax-exempt business league despite the fact that its activities were solely directed toward promoting the interests of Pepsi-Cola and its bottlers rather than the soft drink industry as a whole.

The legislative history of Section 501(c)(6) demonstrates that Congress intended to limit the business league exemption to those organizations that are similar to chambers of commerce and boards of trade. An organization such as petitioner or the Pepsi-Cola Bottlers' Association formed for the purpose of promoting the business of a single manufacturer and its distributors is unlike a chamber of commerce or a board of trade because its activities are not directed to the improvement of business conditions of one or more lines of business. As the dissenting judge in the *Pepsi-Cola* case observed in terms equally appropriate to petitioner's claim: "Bottling Pepsi-Cola is not a line of business. It is only one of a line—one of many competing businesses in the cola and soft drink industry" (*id.* at 253). The Seventh Circuit therefore erred in permitting the Pepsi-Cola Company to obtain a tax exemption for an organization devoted principally to improving its market position against its competitors in the soft drink industry.

ARGUMENT

PETITIONER DOES NOT QUALIFY AS A TAX-EXEMPT BUSINESS LEAGUE UNDER SECTION 501(c)(6) AND THE APPLICABLE REGULATIONS BECAUSE ITS ACTIVITIES ARE DIRECTED SOLELY TOWARD THE PERFORMANCE OF SERVICES FOR THE DEALERS OF A PARTICULAR BRAND OF A PRODUCT RATHER THAN THE IMPROVEMENT OF BUSINESS CONDITIONS OF THOSE WHO DEAL IN ANY BRAND OF THE PRODUCT

The question presented in this federal income tax case involves the scope of the exemption for "business leagues" provided by Section 501(c)(6) of the Internal Revenue Code of 1954, Appendix, *infra*, p. 36. Section 501(a) of the Code accords exempt status to "[a]n organization described in subsection (c) * * *," which in turn sets forth a list of tax-exempt organizations. Subparagraph (6) defines one such category of exempt organization as "[b]usiness leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of which inures to the benefit of any private shareholder or individual." The exemption for business leagues, chambers of commerce, and boards of trade has its genesis at the inception of the modern income tax in 1913.[3]

[3] See Income Tax Act of 1913, Section II, G.(a), 38 Stat. 172. See also S. Rep. No. 80, 63d Cong., 1st Sess., pp. 25-26 (1913), which states in pertinent part:

> Paragraph F is amended so as to provide that nothing in this section of the bill shall apply to "business leagues, nor to chambers of commerce or boards of trade, not organized for profit of a private stockholder or individual; nor to any civil league or organization not organized for profit, but operated exclusively for the promotion of social welfare."

See also H.R. Conf. Rep. No. 86, 63d Cong., 1st Sess., p. 26 (1913); "Tariff Schedules," *Briefs and Statements* filed with the Senate Committee on Finance on H.R. 3321, 63d Cong., 1st Sess., Vol. III, pp. 2001-2003, 2040 (1913) (reprinted in "Tariff Schedules, Free List," *Briefs and Statements* filed with the Senate Committee on Finance on H.R. 3321, 63d Cong., 1st Sess., pp. 1987-1989, 2006 (second print 1913)).

The exemption for real estate boards was added in 1928. See Section 103(7), Revenue Act of 1928, 45 Stat. 813. See H.R. Rep. No. 2, 70th Cong., 1st Sess., p. 17 (1927); S. Rep. No. 960, 70th Cong., 1st Sess., p. 25 (1928); Hearings on Revenue Revision, 1927-1928, before the House Committee on Ways and Means, interim 69th-70th Congs., pp. 235-239, 261, 268, and 269 (1927); Hearings on H.R. 1, the Revenue Act of 1928, before the Senate Committee on Finance, 70th Cong., 1st Sess., pp. 169, 176 (1928).

The exemption for football leagues was added by the Act of November 8, 1966, Section 6(a), 80 Stat. 1515. See H.R. Conf. Rep. No. 2308, 89th Cong., 2d Sess., pp. 9-10 (1966); Summary of the Act Temporarily Suspending the Investment Credit, etc., Joint Committee on Internal Revenue Taxation, 89th Cong., 2d Sess., p. 22 (1966); 112 Cong. Rec. 26886-26887 (1966); 112 Cong. Rec. 28226, 28228 (1966).

Although the Code does not define "business league," the Regulations have long marked out the contours of the statutory term. Treasury Regulations, Section 1.501(c)(6)-1 provides in pertinent part as follows:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest

and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. *Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.* * * * [Emphasis added.]

This definition was first promulgated in 1929 in Treasury Regulations 74, Art. 528 (1928 Revenue Act), and has stood without change for almost half of a century through all succeeding revenue acts.[4] During this period, four circuits and the Court of Claims have upheld this regulatory definition of "business league" as a valid interpretation of the statute. See, *e.g.*, *Indiana Retail Hardware Assn.* v. *United States*, 366 F.2d 998, 999 (Ct. Cl.); *Evanston-North Shore Board of Realtors* v. *United States*, 320 F.2d 375 (Ct. Cl.), certiorari denied, 376 U.S. 931;

[4] See Treasury Regulations 77, Art. 528 (1932 Revenue Act); Treasury Regulations 86, Art. 101(7)-1 (1934 Revenue Act); Treasury Regulations 94, Art. 101(7)-1 (1936 Revenue Act); Treasury Regulations 101, Art. 101(7)-1 (1938 Revenue Act); Treasury Regulations 103, Sec. 19.101(7)-1 (1939 Code); Treasury Regulations 111, Sec. 29.101(7)-1 (1939 Code); Treasury Regulations 118, Sec. 39.101(7)-1 (1939 Code).

The earlier regulations are as follows: Treasury Regulations 33, Art. 87 (1913 Revenue Act); Treasury Regulations 45, Art. 518 (1918 Revenue Act); Treasury Regulations 62, Art. 518 (1921 Revenue Act); Treasury Regulations 65, Art. 518 (1924 Revenue Act); Treasury Regulations 69, Art. 518 (1926 Revenue Act).

United States v. *Oklahoma City Retailers Assn.*, 331 F.2d 328 (C.A. 10); *Automotive Electric Assn.* v. *Commissioner*, 168 F.2d 366 (C.A. 6); *Apartment Operations Assn.* v. *Commissioner*, 136 F.2d 435 (C.A. 9); *Underwriters' Laboratories* v. *Commissioner*, 135 F.2d 371 (C.A. 7), certiorari denied, 320 U.S. 756.

We submit that the decision below correctly held that petitioner does not qualify as a tax-exempt "business league" under Section 501(c)(6) and the applicable Regulations. Petitioner is not "an organization of the same general class as a chamber of commerce or board of trade" whose "activities * * * [are] directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons" (Treasury Regulations, Section 1.501(c)(6)-1). To the contrary, petitioner's activities are solely for the benefit of its limited constituency of Midas Muffler dealers to the exclusion of the rest of the muffler industry. As we shall demonstrate, the legislative history of Section 501(c)(6) and the case law confirm that petitioner's primary purpose—improving business conditions for Midas dealers—is an insufficient basis for exemption as a "business league."

A. The legislative history confirms the reasonableness of the regulation's requirement that a tax-exempt business league's activities must be directed to the improvement of business conditions of one or more lines of business.

1. As originally enacted in 1913, the predecessor of Section 501(c)(6) conferred an income tax exemption upon "business leagues" "chambers of commerce," and "boards of trade." While the committee reports do not define these terms, the legislative history indicates that Congress intended to limit the scope of the exemption to those organizations that benefit a broad sector of the business community. Thus, during the Senate Finance Committee hearings that preceded the enactment of the statute, the General Secretary of the United States Chamber of Commerce emphasized the public purpose and civic role of such organizations as follows: [5]

> While * * * [the commercial organization's] original reason for being is commercial advancement, it is not in the narrow sense of advantage to the individual, but in the broad sense of building up the trade and commerce of the community as a whole and with the fullest recognition of the facts that business can not permanently prosper at the expense of other classes, and that what is expended in improving the city in which

[5] "Tariff Schedules," *Briefs and Statements* filed with the Senate Committee on Finance on H.R. 3321, 63d Cong., 1st Sess., Vol. III, pp. 2001-2003 (1913) (reprinted in "Tariff Schedules, Free List," *Briefs and Statements* filed with the Senate Committee on Finance on H.R. 3321, 63d Cong., 1st Sess., pp. 1987-1989 (second print 1913)).

> it is situated and the conditions of its inhabitants will inevitably redound to the benefit of its commercial interests.

A subsequent statement submitted to the Senate Finance Committee by the Chamber of Commerce urged exemption of "chambers of commerce and similar organizations" because such organizations benefit "all other members * * * of their industries" and increase incomes "not of themselves, but * * * irrespective of membership in the organizations" "Tariff Schedules," *Briefs and Statements, supra*, note 3, p. 13 at pp. 2002, 2003 (second print, pp. 1988-1989).[6]

Similarly, in 1928, when Congress added "real estate boards" to the exemption covering business leagues, it took note of the fact that the 687 real estate boards were "among the livest [sic] cooperating nonprofit enterprises in this country," and "* * * [were] organized for the purpose of the promotion and facilitating of business, like a business league

[6] At the time of the enactment of the original statute, the American Warehousemen's Association submitted the following statement (see "Tariff Schedules," *Briefs and Statements, supra*, at 2040 (second print, p. 2026)):

> Exemption is asked only for commercial organizations which are not organized for profit. These organizations receive their income from dues paid by their members, a form of voluntary tax which business men pay that they may receive *in common with all other members of their communities or of their industries* the benefits of cooperative study of local development, of civic affairs, of industrial resources, and of local, national, and international trade. In fine, these organizations are cooperative agencies of good citizenship in industry and commerce. [Emphasis added.]

or chamber of commerce * * *" by providing information as to the character, utility, and value of real property within a particular geographic area. See House Hearings, Revenue Revision, 1927-1928, *supra*, at pp. 236, 237 (Statement of Nathan William MacChesney). Since Congress "never intended that real estate boards should be taxed," it "had no objection to * * * saying so." House Hearings, *supra*, at 238 (statement of Rep. Chindblom). The pertinent House Committee report therefore concluded that real estate boards were "within the purpose of the section" (H.R. Rep. No. 2, 70th Cong., 1st Sess. 17 (1927)).

Two points emerge with clarity from the foregoing legislative history. First, Congress used the terms "business leagues," "chambers of commerce," and "boards of trade" to indicate organizations of the same general class. This is demonstrated by the 1929 addition of "real estate boards" as conforming to the original congressional purpose in enacting the statutory exemption for chambers of commerce and boards of trade. Thus, in order for an organization to qualify for tax exemption as a business league, it must be of the same character as a chamber of commerce or a board of trade. For a chamber of commerce, the pertinent sector is all business located within a particular geographic area. A board of trade likewise relates to a geographic area but may be limited to only one or more lines of business.[7]

[7] See *Retailers Credit Assn.* v. *Commissioner*, 90 F.2d 47, 51 (C.A. 9). In considering whether an organization was an exempt business league, the court adopted the following definitions of chamber of commerce and board of trade:

> A chamber of commerce is defined by Webster's New International Dictionary to be "A board or association to promote the commercial interest of a locality, a country, or the like." In 11 C.J. 228, and Bouv. Law Dict. (Rawle's 3rd Rev.), it is defined as "a society of a city, who meet to promote the general trade and commerce of the place." * * *
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> * * * *
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> A board of trade is defined in Webster's New International Dictionary as "a body of men organized for the advancement and protection of business interests." Although the terms "chamber of commerce" and "board of trade" are nearly synonymous, there is a slight distinction between their meanings. The former relates to all businesses in a particular geographic location, while the latter may relate to only one or more lines of business in a particular geographic location, but need not relate to all.

See also Rev. Rul. 73-411, 1973-2 Cum. Bull. 180; L.O. 1121, III-1 Cum. Bull. 275, 279-280 (1924).

Second, in order for an organization to resemble a chamber of commerce or a board of trade for purposes of the exemption, it must benefit a broad sector of the business community. The statements of the United States Chamber of Commerce prior to the enactment of the original statute in 1913 and on behalf of the National Association of Real Estate Boards in 1927 in support of the exemption for real estate boards emphasize the semi-public and civic nature of their organizations, their activities in building the trade and commerce of the community, and the resulting benefits to both members and nonmembers alike.

2. The administrative and judicial precedents similarly reflect the congressional purpose to limit the business league exemption to those organizations that resemble chambers of commerce or boards of trade by benefiting a broad segment of the business community. In 1924, the then Bureau of Internal Revenue issued a law opinion concluding that a stock exchange was not an exempt business league. In so ruling, the Bureau stated as follows (L.O. 1121, III-1 Cum. Bull. 275, 280-281 (1924)):[8]

> Under the well-established maxim *noscitur a sociis*, the meaning of a word used in a statute must be construed in connection with the words with which it is associated. Although it is undoubtedly true, as stated in article 518 of Regulations 62, that a business league does not need to be similar in all respects to a chamber of commerce or board of trade, nevertheless it appears under the accepted principles of statutory construction that Congress must have used the expressions "business leagues," "chambers of commerce," and "boards of trade" to indicate organizations of the same general class, having for their primary purpose the promotion of business welfare. Although it may be true that stock exchanges incidentally contribute to the promotion of business welfare and indirectly contribute to business prosperity, nevertheless their primary purpose is to afford facilities to a limited class of people for the transaction of their private business. Therefore, stock exchanges are not business leagues, chambers of commerce, or boards of trade within the meaning of section 231.

[8] Pursuant to the program announced in Rev. Proc. 67-6, 1967-1 Cum. Bull. 576, for the review of rulings issued prior to 1953, L.O. 1121, *supra*, was declared obsolete by Rev. Rul. 68-207, 1968-1 Cum. Bull. 577, 578. However, the reasoning and result of L.O. 1121 continues to represent the governing law applicable to the business league exemption. It was declared obsolete because the Regulation since 1925 has expressly denied exempt status to stock exchanges. T.D. 3746, IV-2 Cum. Bull. 77 (1925). See Treasury Regulations, Section 1.501(c)(6)-1, Appendix, *infra*, pp. 37-38, which provides "A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of Section 501(c)(6) and is not exempt from tax."

Three years later, the Board of Tax Appeals ruled that a corporation organized by associations of insurance companies to provide printing services for their member companies was not an exempt business league. *Uniform Printing & Supply Co.* v. *Commissioner*, 9 B.T.A. 251, affirmed, 33 F.2d 445 (C.A. 7), certiorari denied, 280 U.S. 591. In so holding, the Board reaffirmed the Treasury's position, based upon the legislative history, that "a business league, to be entitled to the exemption, should be engaged in and limited to activities similar to those of the ordinary chamber of commerce or board of trade * * *" (9 B.T.A. at 254). As a result of that decision, the Commissioner revised the Regulation to its present form in 1929 in order to incorporate the rule that the business league exemption is limited to organiza-

tions of the same general class as a chamber of commerce or board of trade.[9]

Since the principal characteristic of a chamber of commerce or a board of trade (and the characteristic that motivated the tax exemption) is that it benefits a broad spectrum of the business community, the rule that a tax-exempt business league resemble a chamber of commerce or board of trade includes the corollary requirement that it direct its activities toward improving conditions in at least one line of business.

The correctness of this proposition was early recognized by the courts. Thus, in *Produce Exchange Stock Clearing Ass'n* v. *Helvering*, 71 F.2d 142 (C.A. 2), the court denied an exemption to a stock clearing association that performed services only for its own members and not for the line of business encompassing all brokers trading on the New York Produce Exchange. In terms equally appropriate to petitioner's claim in this case, the court stated (*id.* at 143-144):

> The petitioner's activities are solely for the direct benefit of its so-called "clearing members." Nothing is done to advance the interests of the community or to improve the standards or conditions of a particular trade, as in the case of chambers of commerce, real estate boards, and boards of trade. Under the familiar doctrine of noscitur a sociis, a business league to be exempt must possess the general characteristics of these

[9] See and compare Treasury Regulations 69, Art. 518 (1926 Revenue Act) with Treasury Regulations 74, Art. 528 (1928 Revenue Act).

> other organizations with which the statute groups it.

Accord; *Evanston-North Shore Board of Realtors* v. *United States*, 320 F.2d 375, 379-380 (Ct. Cl.) (Reed, J.), certiorari denied, 376 U.S. 931; *Automotive Electric Assn.* v. *Commissioner*, 168 F.2d 366, 367-368 (C.A. 6); *Park West-Riverside Associates, Inc.* v. *Commissioner*, P-H B.T.A. Memo., par. 39,251, affirmed *per curiam*, 110 F.2d 1022 (C.A. 2); *Retailers Credit Assn.* v. *Commissioner*, 90 F.2d 47, 50 (C.A. 9); *American Fisherman's Tuna Boat Ass'n* v. *Rogan*, 51 F. Supp. 933, 936 (S.D. Cal.); *Northwestern Municipal Ass'n* v. *United States*, 22 F. Supp. 18, 22 (D. Minn.).

3. The foregoing legislative history and case law confirm the correctness as well as reasonableness of the Regulation's requirement that the activities of a tax-exempt business league "should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons." As this Court has consistently held, "[I]t is fundamental * * * that as 'contemporaneous constructions by those charged with administration of' the Code, [Treasury] Regulations 'must be sustained unless unreasonable and plainly inconsistent with the revenue statutes' and 'should not be overruled except for weighty reasons.'" *Bingler* v. *Johnson*, 394 U.S. 741, 749-750, quoting from *Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, 501. Accord: *Fulman* v. *United States*, 434 U.S. 528, 532-533; *United States*

v. *Correll*, 389 U.S. 299, 306-307; *Better Business Bureau* v. *United States*, 326 U.S. 279, 286. This rule of deference is particularly appropriate here because the Regulation constitutes a long-standing administrative interpretation for almost 50 years and has been in effect during successive reenactments of the statute that have included extensive revision of the exempt organization provisions. *Helvering* v. *Winmill*, 305 U.S. 79, 83; *Lykes* v. *United States*, 343 U.S. 118.[10]

Here, as we have pointed out (*supra*, pp. 16-22), the line of business requirement of the Regulations implements the congressional purpose of limiting the business league exemption to those organizations that possess the same general characteristics as chambers of commerce and boards of trade. For a chamber of commerce, the pertinent sector is a geographic area; for a board of trade, a particular business or industry is the focus of attention so that its membership would be composed of competing businesses. The purpose of Section 501(c)(6) is therefore to provide an exemption for organizations that promote some aspect of the general economic welfare rather than support particular private interests.

An organization confined to the distribution chain of a single brand or manufacturer does not promote the general economic welfare in the manner of a chamber of commerce or a board of trade. To the contrary, such an organization is much more likely to

[10] Compare Section II, G.(a) of the Income Tax Act of 1913 with the 21 paragraphs devoted to exempt organizations in the current version of Section 501(c) of the 1954 Code.

perform particular services for individual persons rather than to seek the improvement of business conditions for a broad segment of the business community. Thus, the line of business requirement effectively distinguishes between those organizations that advance particular narrow private interests and those that are involved in promoting the commercial activity of the community as a whole or a specific industry. As the court of appeals correctly concluded, "[t]he 'line of business' requirement contained in the regulations is well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community" (Pet. App. A, p. 5a; footnote omitted).

B. Petitioner does not meet the line of business requirement of the regulations because its activities only serve the interests of Midas Muffler Dealers and do not benefit the muffler industry as a whole.

1. Given the reasonableness of the line of business requirement of the Regulations and applying it to the facts of this case, it is readily apparent that petitioner's activities are not "directed to the improvement of business conditions of one or more lines of business." It therefore does not merit exemption as a business league.

As the court of appeals observed (Pet. App. A, p. 6a), petitioner does not draw its franchise members from the broad base of muffler dealers generally but limits its rolls to Midas Muffler dealers. Despite the technical eligibility of "[a]ny muffler dealer holding a valid franchise" (A. 47a), it is undisputed that all

of petitioner's members are franchisees of a single manufacturer—Midas International Corporation. Indeed, petitioner's activities of serving the exclusive interests of Midas dealers in their day-to-day relations with their franchisor reflect its limited constituency. Thus, for example, petitioner negotiated a better contract and obtained price reductions solely for Midas dealers, published a news letter and held conventions for Midas dealers, and provided a group insurance program for its member Midas dealers. In its solicitation for new members, petitioner announced a program to establish committees "at Midas' suggestion—to help make the Midas program an ongoing source of profit for everyone" (Ex. D, A. 50a). On these facts, petitioner can hardly quarrel with the district court's finding approved by the court of appeals that "it failed to establish that it conferred any benefit on muffler dealers in general" (Pet. App. A, pp. 6a-7a; Pet. App. B, p. 11a).

2. a. Petitioner does not directly challenge the validity of the line of business requirement of the Regulation. Instead, it argues (Br. 25) that the paramount criterion for qualification as an exempt business league is set forth in the first sentence of the Regulation, *i.e.*, that the organization be "an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit." Petitioner (Br. 25) dismisses as merely "illustrative" of the "common business requirement" the second and third sentences of the Regulation that equate a business league to a chamber of commerce or a board of trade and provide that its activities be directed to the improvement of business conditions of one or more lines of business.

But the plain language of the Regulation refutes petitioner's attempt to brush aside the line of business requirement as an illustration of qualification under the common business interest test. The portions of the Regulation setting forth the analogy to chambers of commerce and the line of business requirement are not prefaced with the phrase "for example" or any other qualifying term that would suggest they are merely illustrative. To the contrary, they have substantive force as separate and independent tests to qualify for exempt status. Indeed, petitioner's variant reading of the Regulations has been flatly rejected by a uniform body of case law holding that to be qualified for exemption under Section 501(c)(6) an organization must meet *each* of the following conditions: (1) it must be a business league; (2) it must not be organized for profit; (3) it must be an organization no part of the net earnings of which inures to the benefit of any private shareholder or individual; (4) it must be an association of persons, incorporated or unincorporated, having common business interests the purpose of which is to promote those common interests; (5) its activities must be directed at improving the business conditions of one or more lines of business and not particular services for individual persons, and (6) it

may not engage in a business ordinarily carried on for profit. If any of these conditions is not met, the exemption is not applicable.[11] *United States* v. *Oklahoma City Retailers Assn.*, 331 F.2d 328, 331 (C.A. 10); *Indiana Retail Hardware Assn.* v. *United States*, *supra*, 366 F.2d at 1000; *Evanston-North Shore Board of Realtors* v. *United States*, *supra*, 320 F.2d at 377.[12]

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[11] Even on the assumption that petitioner's interpretation of the Regulation is correct, its exclusion of competing non-Midas dealers disqualifies it under the "common business interest" test that it urges is the paramount criterion for exemption. As a leading commentator on trade associations has observed, the common business interest presumes an association of competing businesses. See Webster, *The Law of Associations* 223 (1971):

> The meaning and import of the first requirement [common business interest] are certain. In all of the administratively and judicially approved associations the organization involved was composed of professionals or businessmen or business representatives in a competitive relationship with one another, sharing a common denominator of interest, who joined together to improve business or professional conditions generally while still maintaining the competitive relationship.

[12] The *amicus* Pepsi-Cola Bottlers Association similarly argues (Br. 26-27) that the Regulation's disqualification of organizations engaged in profit-making businesses or in the performance of particular services for members is sufficient to limit the exemption to organizations that serve the common business interests of its members. In the *amicus*' view (Br. 13), "[t]he distinction drawn by the relevant language of the Regulation is not between broad and narrow industry groups but between activity directed to the common interest of the

membership in improving the conditions which underlie their respective businesses and activity directed to generating particular profits or economies for individual members." The *amicus* reads the phrase "as distinguished from" that separates the line of business requirement from the prohibition against the performance of particular services as suggesting that any organization that refrains from performing services for individuals meets the common business test and is therefore exempt (see Br. 22).

But this argument ignores the independent positive command of the Regulation that the organization's activities "be directed to the improvement of business conditions of one or more lines of business." Instead, it focuses solely on the negative portion of the sentence that the organization should not engage in "the performance of particular services for individual persons" and equates that aspect of the Regulation with the common business interest requirement. In order to qualify for exemption, an organization must meet both the positive line of business requirement and avoid the activities that the Regulation deems inconsistent with exempt status. Thus, the fact that an organization does not engage in the performance of particular services for individual persons is not a sufficient basis for exemption.

Accordingly, the plain language of the Regulation refutes the *amicus*' reading that would elevate one condition for qualification at the expense of another. As the courts have uniformly held (see *supra*, pp. 27-28), qualification requires meeting each condition of the Regulation. *Washington State Apples, Inc.* v. *Commissioner*, 46 B.T.A. 64, *acq.* 1942-1 Cum. Bull. 17, upon which the *amicus* relies (Br. 12-14, 19, 24, 30), is not to the contrary. There, the Board recognized and applied the requirement that a tax-exempt business league's activities be directed to the improvement of one or more lines of business (46 B.T.A. at 69). The pertinent line of business was apple growing and shipping in the State of Washington and any person engaged in that activity was eligible for membership in the taxpayer (*id.* at 66). In holding that the taxpayer was engaged in improving the general commercial welfare of the community as a whole because of the importance of the apple industry in Washington, the Board noted that the taxpayer's

b. Petitioner further argues (Br. 4) that it is entitled to an exemption as a trade association of muffler dealers. To be sure, a trade association that meets the various conditions of the Regulation are typical exempt business leagues under Section 501(c)(6). See generally Webster, *supra*, at 223. But it defies common understanding to assert that a trade association can consist entirely of distributors or promoters of one brand, to the exclusion of competitors. To the contrary, an association designed to facilitate promotion or distribution of a particular brand of product, to the exclusion of all dealers handling competing brands, is not a trade association within the accepted meaning of that term. The standard definitions of a trade association invariably state that it includes business competitors in a given industry. For example, the Department of Commerce defines a trade association as a "nonprofit, cooperative, voluntarily-joined, organization of business competitors, designed to assist its members and its industry in dealing with mutual problems in several of

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advertising did not mention any brand name or particular grower but only the varieties of apples grown in Washington (*id.* at 69). Accord: *American Fishermen's Tuna Boat Ass'n* v. *Rogan*, 51 F. Supp. 933 (S.D. Cal.).

Rev. Rul. 67-252, 1967-1 Cum. Bull. 195, upon which the *amicus* also relies (Br. 17-18, 22, 30), is similarly distinguishable. There, the Service ruled that a non-profit corporation formed by processors, packagers, and distributors of a processed agricultural product to promote the sale of that product was exempt under Section 501(c)(6). But unlike this case, there is no suggestion that the activities of the organization were limited to promoting a particular brand.

the following areas: accounting practices, business ethics, commercial and industrial research, standardization, statistics, trade promotion, and relations with government, employees, and the general public."[13] Likewise, since 1929, the Federal Trade Commission has defined a trade association as a "nonprofit organization * * * of business competitors for the promotion of one or more economic interests of those in the line of business, or of the members, in the territory covered."[14] Indeed, a genuine trade association of competitors would not have paid, as did petitioner, 50 percent of the cost of a market study in order to "maintain and strengthen" the position of Midas in the muffler replacement business (Tr. 94, 97, 107; Ex. E, p. i). Nor would it have accepted Midas' suggestion to establish committees "to help make the Midas program an ongoing source of profit for everyone" (A. 50a). In short, petitioner's acknowledged

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[13] Judkins, *National Associations of the United States*, U.S. Dept. of Commerce, p. viii (1949), accord, *National Trade & Professional Associations of the United States and Canada* p. 5 (1978). In 1941, a government study similarly defined a trade association as a 'voluntary, nonprofit organization of enterprises engaged in a particular kind of business. Such enterprises may be individuals, partnerships, or corporations, and in nearly all associations are competitors." *Investigation of Concentration of Economic Power*, Temporary National Economic Committee, Monograph No. 18, Trade Association Survey, p. 1, 76th Cong., 3d Sess. (Senate Committee Print 1941).

[14] *Open-Price Trade Associations*, S. Doc. No. 226, 70th Cong., 2d Sess. i (1929). This report was published in the same year that the predecessor of Treasury Regulations, Section 1.501(c)(6)-1 was amended to include the line-of-business requirement.

exclusion of competing non-Midas dealers and its activities in promoting the products of Midas flatly contradict its claim that it is a trade association of muffler dealers.[15]

c. Finally, petitioner argues that it is entitled to a business league exemption because it has created an "economic balance" that would otherwise be lacking as a result of "the inherently unequal economic power between the individual franchisee and the monolithic franchisor" (Br. 20). In petitioner's view, "[t]his balancing of economic power is clearly in furtherance of the economic public policy of the United States and was intended by Congress to be encouraged" (Br. 9-10).

However admirable petitioner's goals and accomplishments on behalf of the Midas dealers may be, they bear no relationship to the criteria for qualification under Section 501(c)(6) and the applicable Regulation. As the court of appeals properly observed in rejecting this claim, "Whatever its merits, that argument is more appropriately directed to Congress. Nothing in the statute empowers the courts to grant tax exemptions to organizations, however novel, which

[15] Petitioner also suggests (Br. 24-25) that a nationwide franchisee organization is equivalent to a football league, which Congress added to the Section 501(c)(6) list of exempt organizations in 1966. But nothing in the legislative history of the 1966 amendment would support such a novel reading of the statutory exemption for "professional football leagues (whether or not administering a pension fund for football players)."

serve merely some public interest but not the broad interest intended by Congress" (Pet. App. A, p. 7a).[16]

3. The sole authority supporting petitioner's claim to tax-exempt status as a business league is *Pepsi-Cola Bottlers' Assn., Inc.* v. *United States*, 369 F.2d 250 (C.A. 7). There, a divided panel held that an organization of Pepsi-Cola Bottlers formed to "extend, further, protect, and improve the trade and business of bottling and selling Pepsi-Cola" (*id.* at 251) rather than the soft drink industry as a whole met the line of business requirement of the Regulation and qualified as a tax-exempt business league. The majority accordingly concluded that "[t]he plaintiff Association cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute a limitation wholly unsupported by the legislative history" (*id.* at 252).

But as we have pointed out *supra*, pp. 16-22, the legislative history demonstrates that Congress intended to limit the business league exemption to those

[16] Petitioner relies (Br. 15-18) on two rulings issued by the Internal Revenue Service according exempt status to employer associations that bargain collectively with employees and labor groups. (Rev. Rul. 65-164, 1965-1 Cum. Bull. 238), and to industry associations that promote legislation relating to common industry problems (Rev. Rul. 61-177, 1961-2 Cum. Bull. 117). But contrary to petitioner's argument, these rulings were not issued on the ground that the organizations performed activities that advance public policy. Rather, the rationale of the rulings was that the organizations represented businesses on an industry-wide basis and thereby met the line of business requirement of the Regulation.

organizations that are similar to chambers of commerce and boards of trade. An organization financed by the Pepsi-Cola Company for the purpose of increasing the sales of Pepsi-Cola whose membership is limited to bottlers of Pepsi Cola (*id.* at 251) is not analogous to a chamber of commerce or a board of trade. Like petitioner, its activities are limited to promoting the business of a single manufacturer and not to the improvement of business conditions of one or more lines of business. The Seventh Circuit therefore erred in permitting the Pepsi-Cola Company to obtain a tax exemption for an organization devoted solely to improving its market position against its competitors in the soft drink industry. See Note, *Taxation—Business League Exemption*, 35 Fordham L. Rev. 738 (1967).[17] As the dissenting judge observed in terms equally appropriate to this case (369 F.2d 253):

> Bottling Pepsi-Cola is not a line of business. It is only one of a line—one of many competing businesses in the cola and soft drink industry. And the services rendered by the Association to its members are not incidental to a general purpose of improving business conditions. They are essential to an express general purpose, the improvement of the members' competitive position as against nonmembers.

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[17] Shortly after the *Pepsi-Cola* decision, the Internal Revenue Service announced that it would not follow it. See Rev. Rul. 68-182, 1968-1 Cum. Bull. 263.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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SEPTEMBER 1978.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS. CERTAIN TRUSTS, ETC.

(a) [as amended by Section 101(j)(3), Tax Reform Act of 1969, 83 Stat. 526] *Exemption From Taxation.*—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * * * *

(c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):

* * * * *

(6) [as amended by Section 6(a), Act of November 8, 1966, 80 Stat. 1515] Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.):

§ 1.501(c)(6)-1. *Business leagues, chambers of commerce, real estate boards, and boards of trade.*

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distingiushed from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable

upon their unrelated business taxable income. See part II (section 511 and following), subchapter F, chapter 1 of the Code, and the regulations thereunder.

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FOR ARGUMENT

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Supreme Court of the United States

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner

- against -

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR PETITIONER

The brief of the United States in this case proceeds upon the basis of certain contentions which are of questionable validity. Petitioner respectfully submits this brief in reply to two of these contentions which we believe merit brief

comment.

I.

The first contention with which we must take exception is the claim, consistently made by Respondent throughout this proceeding, that in order to receive the business league exemption, an organization must be of the same general class as a chamber of commerce or a board of trade. (Resp. 18, passim).[1] Despite the fact that such language appears in the second sentence of the governing regulation, a fact discussed briefly below, we submit that the limitation is not justified by either the statutory language, the "legislative history" or the judicial precedents relied upon by Respondent in its brief.

We suggest that a business league is nothing more and nothing less than

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1. Resp. 18 - Respondent's Brief, page 18

its plain words suggest and we believe that that meaning is captured in the first sentence of the regulation: "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit". (As quoted at Pet. 3)[2] It is undisputed that Petitioner meets each one of these requirements and, indeed, we suggest that Petitioner's activities constitute virtually a textbook example of adherence to a regulatory definition.

The statute grants the exemption to "business leagues" as well as other specified organizations. It does not grant it to "business leagues which are of the same general class as a chamber of commerce or board of trade," nor is there any other

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2. Pet. 3 - Petitioner's Brief, page 3

limiting language. That limitation, moreover, is even more difficult to justify in view of the inclusion within the statute of "football leagues", which are hardly of the same general character as chambers of commerce or boards of trade and hardly benefit a broad sector of the business community. Although the meaning of a word may some times be determined by the meaning of other words with which it is associated (noscitur a sociis), the resort to such a maxim is not justified in this case as the term "business league" contained in the statute is quite simple and properly defined in the regulation's first sentence.

Nor is Respondent aided by the "legislative history" upon which it relies to demonstrate the limitation. (Resp. 16-17) The language quoted by Respondent in support of its position comes not from the mouth of any legislator but rather from the United States Chamber of Commerce, hardly an un-

interested party in having a tax exemption granted to commercial organizations. We suggest that self-serving statements by trade organizations glorifying their contributions to the public welfare are not a substitute for statements by the lawmakers and that this type of "legislative history" offers Respondent little support.

While it is true that the "same general class" and line of business" language does appear in the governing regulation, Respondent's own discussion of the judicial precedent for the inclusion of such language (Resp. 21) states that the amendment which incorporated that language was added in 1929, sixteen years after passage of the statutory exemption, and indicates that the amendment went much further than warranted. The brief states that the language was added "as a result" of a Board of Tax Appeals decision denying the business league exemption to a "... corporation organized by associations

of insurance companies to provide printing services for their member companies..." Resp. 21).

That decision held only that an exemption will not be granted to a trade association which does no more than assist its members to do more expeditiously or economically that which they could accomplish themselves. This is consistent with the position which Petitioner has maintained throughout this proceeding, - that the exemption was created to permit businessmen to join together to accomplish valid business goals which they could not accomplish by themselves. (Pet. 14-16). It is a long step from denying the exemption to an association which merely provides services to its members more economically, to a rule which would require an exempt association to be of the same general class as a chamber of commerce or a board of trade and there was absolutely no justification for taking that

long step.

II.

The second contention with which we must take specific exception is Respondent's seeming assertion that the exemption must be denied because Petitioner worked with the franchisor to assist in the strengthing of Midas as a factor in the muffler industry.[3] (Resp. 31-32). This seems to be nothing more than a reversion of the United States to its initial position that the exemption ought to be denied because Petitioner is an arm of the Midas organization. (See Joint Appendix A-165). Nothing could be further from the truth.

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3. Respondent goes even further in its comments about the Pepsi Cola Bottlers Association, Amicus Curiae herein, asserting that that association is financed by its members' franchisor. (Resp. 34). That characterization has no basis on the record or in fact. The purposes and financing of that association are described at pp. 4-6 of the Amicus' brief herein and reflect membership financing similar to that of Petitioner.

Certainly it is true that the goals of franchisor and franchisee will often coincide, but that in no way mitigates against Petitioner's primary raison d'etre, - the redress of the traditional economic imbalance between franchisor and franchisee. This mutuality of interest is not unlike the interest shared by a labor union in the success of its members' employer(s). The success of the employer is greatly determinative of the success or failure of the employees and we are certain the Respondent would not argue that this fact in any manner threatens its statutory exemption. Such an argument directed at a franchisee association is entitled to no more weight than if directed at a labor union.

CONCLUSION

The requested exemption is proper and Respondent's brief offers no

valid reason for its denial.

Respectfully submitted,

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IN THE

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NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA.

BRIEF FOR PEPSI-COLA BOTTLERS ASSOCIATION, INC. AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA.

BRIEF FOR PEPSI-COLA BOTTLERS ASSOCIATION, INC. AS AMICUS CURIAE

With the consent of the Petitioner and the United States, Pepsi-Cola Bottlers Association, Inc. submits this brief as *amicus curiae.*

Statement of Interest

Pepsi-Cola Bottlers Association, Inc. (hereinafter sometimes referred to as "PCBA") is an association of individuals, firms and corporations engaged in the manufacture and sale of Pepsi-Cola and other beverages and is organized as a not-for-profit corporation under the laws of Illinois. PCBA has been held by the Court of Appeals for the Seventh Circuit to be exempt from federal income taxation as a business league under Section 501(c)(6) of the Internal Revenue Code of 1954, as amended (the "Code"), 26 U.S.C. § 501(c)(6). *Pepsi-Cola Bottlers' Association* v. *United States,* 369 F.2d 250 (7th Cir. 1966), *aff'g* 65-2 U.S. Tax

Cas. (CCH) ¶ 9705 (N.D. Ill. 1965). The decision of the Second Circuit in the present action squarely conflicts with the holding of the Seventh Circuit and, for the reasons set forth herein, should be reversed.

The Commissioner of Internal Revenue challenged PCBA's exempt status and assessed income tax on PCBA in 1959; PCBA brought an action in the district court to obtain a refund, and its claims were sustained by the courts. *Pepsi-Cola Bottlers' Association* v. *United States,* 65-2 U.S. Tax Cas. (CCH) ¶ 9705 (N.D. Ill. 1965), *aff'd,* 369 F.2d 250 (7th Cir. 1966). The government argued in both the district court and the court of appeals in that case, as it does herein, that because the members of PCBA were franchisees of a single franchisor, their activities did not constitute the promotion of business conditions of a "line of business" and that therefore PCBA did not qualify as an exempt business league. Both the district court and the Seventh Circuit rejected this argument and held that PCBA qualified for exemption under Section 501(c)(6) of the Code. *Id.*.

The Second Circuit has now explicitly declined to follow that decision. *National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 n.1 (2d Cir. 1977). Moreover, the stated grounds of decision in the opinion appealed from—*i.e.*, that an organization whose members are franchisees of a single franchisor is not a "business league" for purposes of Code Section 501(c)(6)—directly affect the tax status of PCBA. Therefore, with the consent of the parties, PCBA is filing this brief in support of the decision of the Seventh Circuit, to urge reversal of the decision of the Second Circuit and to preserve its rights as a not-for-profit business league to exemption from federal income taxation.

Opinions Below

The findings of fact, conclusions of law and order of the district court are unreported, but are attached as Appendix B to the Petition for Writ of Certiorari filed by the Petitioner herein. The opinion of the court of appeals, *National Muffler Dealers Association* v. *United States,* 565 F.2d 845 (2d Cir. 1977), affirming the decision of the district court, is attached as Appendix A to the Petition for Writ of Certiorari.

Questions Presented

1. Whether the courts below applied the proper standards for determining whether a trade association, not organized for profit and no part of the net earnings of which inures to the benefit of any individual member or shareholder, is a business league qualifying for exemption from income tax under Section 501(c)(6) of the Code.

2. Whether the fact that all of the members of a trade association are franchisees of a single franchisor automatically precludes such an organization from qualifying as a business league exempt from federal income taxation under Section 501(c)(6) of the Code.

Statement of Facts

The Pepsi-Cola Bottlers Association as *amicus* restates briefly the salient facts of the case which are pertinent to the issues discussed in this brief and further presents an outline of its own organization, purposes and activities, in order to clarify the positions taken herein.

As found by the district court, the Petitioner, National Muffler Dealers Association, Inc., is a corporation or-

ganized under the New York Not-For-Profit Corporation Law as a trade association of "Midas Muffler" franchisees. Findings of Fact of the district court (hereinafter, "Finding") No. 1. Throughout the Petitioner's history, its membership has been made up exclusively of Midas Muffler franchisees. Finding 7. The principal activities of the Petitioner are: acting as a bargaining representative for its members in their dealings with their franchisor, Midas International Corp., the publication of a newsletter, the holding of annual conventions and the administration of group insurance programs for its members. Finding 10.

The district court further found as facts that "Midas dealers alone do not constitute a line of business" and that "[t]here is no evidence of any direct benefit to the public" conferred by the Petitioner. Findings 13, 14.

The court made no finding as to whether any part of the net earnings of the Petitioner inures to the benefit of any private shareholder or individual, nor was there a finding as to whether the Petitioner engages in a regular business of a kind ordinarily carried on for profit or whether the purpose of the Petitioner is the performance of particular services for individual persons; there is no indication in the record that these matters were in issue.

PCBA resembles the Petitioner in that each is an association of franchisees of a single franchisor, organized as a not-for-profit corporation to promote the common interests of its members. In the case of PCBA, all members hold exclusive trademark license agreements with PepsiCo, Inc. (hereinafter, "PepsiCo") authorizing them to perform the functions of manufacturing and distributing Pepsi-Cola and other PepsiCo beverage products. The membership of PCBA is composed of the holders of 468 such franchises granted by PepsiCo throughout the United States.

In addition, some of the functions performed by the Petitioner, including the administration of group insurance programs for members and the publication of newsletters, are similarly performed by PCBA.

Unlike the Petitioner, PCBA is not the official bargaining agent for its members in their individual negotiations with their franchisor. PCBA's role vis-à-vis PepsiCo is primarily to act as a "sounding board"—that is, PCBA, working through committees of members, may collect and synthesize its members' responses on various PepsiCo policies in such areas as marketing, packaging, standardization and management development, communicate the concerns of the bottlers on these issues to PepsiCo, and discuss how such problems as may arise can best be worked out.

In addition to these "sounding board" functions, PCBA, again largely through committees composed of members, gathers and disseminates to its members information on developments in such areas as quality control and management education; promotes participation in management education programs offered by PepsiCo to bottlers' employees; conducts legislative work and litigation on matters of interest to the membership generally and in the name of PCBA; and as mentioned above, acts as administrator of several voluntary group insurance policies for members only, sponsoring trusts which actually receive and process the premiums. PCBA performs no functions which are designed to benefit an individual member, or a group of members, as distinguished from the membership as a whole.

PCBA is funded entirely by dues fixed according to the amount of concentrate purchased by each member from PepsiCo during the previous year, by special assessments, when needed, in the same ratio as dues, and by reimburse-

ment of PCBA by the group insurance trusts for the cost of administration of the programs.

All funds taken in by PCBA are in turn expended in furtherance of the common business purposes of the members. Any surplus is held in reserve against deficit years such as have occurred several times in the past, and again is eventually to be used for the furtherance of the members' common purposes. No distribution or rebate of funds has ever been made to any member. The by-laws of PCBA provide that, upon dissolution, all of its assets are to be distributed to the Red Cross or another charitable organization.

Many of the members of PCBA bottle soft drinks or beverages other than those of PepsiCo. Thus, PCBA members manufacture and distribute the brands of other trademark owners (though not other cola beverages). The PCBA membership, taken as a whole, is involved in the manufacture and sale of virtually every other significant non-cola soft drink brand in this country.

There is no general association composed exclusively of soft drink bottlers. The National Soft Drink Association (NSDA) is composed of manufacturers of soft drink concentrate and syrups (the trademark owners) and others with an interest in the soft drink industry, in addition to bottlers. Approximately 80% of the current members of PCBA also belong to this group. While some activities of NSDA overlap those of PCBA, particularly in the area of legislative work and, to some extent, in the area of standardization, PCBA performs many functions in these areas, as well as in such areas as dissemination of market information and management education, which its members can support through no other trade association.

Governing Statute and Regulation

Statute:

Section 501 of the Code provides in pertinent part as follows:

> (a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.
>
> . . . .
>
> (c) . . .
>
> (6) Business leagues, chambers of commerce, real-estate boards, or boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Regulation:

Treas. Reg. § 1.501(c)(6)-1 further defines the term "business league" in the following terms:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of

particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income.

Legislative History:

The exemption from federal income tax for business leagues, boards of trade and chambers of commerce was instituted in the Revenue Act of 1913, ch. 16, 38 Stat. 114, the first federal income tax law enacted after ratification of the Sixteenth Amendment, and received only cursory legislative explanation.

The original House version of the Act, H.R. 3321, 63rd Cong., 1st Sess., had contained relatively little particularization of the kinds of non-profit organizations which were to be exempt from the income tax, apparently due to the view of Representative Cordell Hull, principal author of the Act, and others that "any kind of society or corporation that is not doing business for profit and not acquiring profit would not come within the meaning of the taxing clause of Paragraph G" of Section II of the Act,

taxing the "entire net income" of corporations, joint-stock companies and associations. 50 Cong. Rec. 1306 (1913).

Section II of the Act was amended in the Senate Finance Committee, to provide that nothing in the bill would apply to "business leagues, nor to chambers of commerce or boards of trade, not organized for profit of a private stockholder or individual; nor to any league or organization not organized for profit, but operated exclusively for the social welfare." S. Rep. No. 80, 63rd Cong., 1st Sess. 25-26 (1913). These trade association categories were added to a list of other exempt organizations, accompanied by the qualifying phrase, "not organized for profit or no part of the net income of which inures to the benefit of any private stockholder or individual." Ch. 16, § II, ¶ G(a), 38 Stat. 172.

The Committee Report is silent as to the purpose of the amendment; and the Committee of the Conference, which accepted the amendment without change, also offered no explanation. *See* H.R. Rep. No. 86, 63rd Cong., 1st Sess. 26 (1913).

While amendment of the bill so as to describe exempt organizations in more detail may have represented some advance in the conceptualization of "income" over that expressed by Representative Hull, the more explicit legislative history of companion exemptions suggests that Congress may have been more concerned with the administrative waste involved in taxing truly not-for-profit associations than with advancing any particular public purpose. Thus, in reorganizing and expanding the exemption clauses in the Revenue Act of 1916, so as to include *inter alia* the predecessor of the current Section 501(c)(7), the Ways and Means Committee said:

> It was deemed advisable to specifically extend the exemption to other corporations similar to those enumer-

> ated in the present law as exempt from tax in view of the fact that the experience of the Treasury Department has been that the securing of returns from them has been a source of expense and annoyance and has resulted in the collection of either no tax or an amount which is practically negligible.

H.R. Rep. No. 922, 64th Cong., 1st Sess. 4 (1916).

Without explanation in the committee reports or floor debate, Congress at that time also amended the business league, chamber of commerce and board of trade exemption proviso so as to read, "not organized for profit *and* no part of the net income of which inures to the benefit of any private stockholder or individual." Revenue Act of 1916, ch. 463, § 11(a), 39 Stat. 766 (emphasis added).

The business league exemption was reenacted in the Revenue Acts of 1918, 1921, 1924, 1926, 1928, 1932, 1934 and 1936, and incorporated in the Internal Revenue Codes of 1939 and 1954, all without discussion or substantive change.[1]

The Treasury Regulation interpreting the statutory exemption of business leagues has been in effect, again with-

[1] Revenue Act of 1918, ch. 18, § 231(7), 40 Stat. 1076; Revenue Act of 1921, ch. 136, § 231(7), 42 Stat. 253; Revenue Act of 1924, ch. 234, § 231(7), 43 Stat. 282; Revenue Act of 1926, ch. 27, § 231(7), 44 Stat. 40; Revenue Act of 1928, ch. 852, § 103(7), 45 Stat. 813 (including "real estate boards" for the first time); Revenue Act of 1932, ch. 209, § 103(7), 47 Stat. 193; Revenue Act of 1934, ch. 277, § 101(7), 48 Stat. 700; Revenue Act of 1936, ch. 690, § 101(7), 49 Stat. 1674; Revenue Act of 1938, ch. 289, § 101(7), 52 Stat. 481; Internal Revenue Code of 1939, § 101(7). Section 501(c)(6) was amended in 1966 to include a separate section making clear that a professional football league will not lose the benefit of the exemption by virtue of the fact that it administers a pension fund for football players. Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(a), 80 Stat. 1515, explained at H.R. Rep. No. 2308, 89th Cong., 2d Sess. 9-10 (1966).

out substantial change (apart from the addition of a reference to the "unrelated business income" provisions of the Code), since 1929.[2] As noted by the court of appeals, the Regulation has been recognized as having the force of law. *National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 (2d Cir. 1977); *Indiana Retail Hardware Association* v. *United States*, 366 F.2d 998, 999 (Ct. Cl. 1966) and cases cited.

Summary of Argument

The decision below applies an incorrect and unworkable standard for determining whether a trade association qualifies as a non-profit business league eligible for exemption from income tax under Section 501(c)(6) of the Code.

It is the position of PCBA (1) that the court of appeals erroneously required that the Petitioner show that its activities directly benefited the general public; (2) that the court of appeals misread the "line of business" language of Treas. Reg. § 1.501(c)(6)-1 as setting a minimum standard of industry-wide membership of an exempt business league, whereas in fact the language merely clarifies the requirement that such an organization serve the common interests of its membership as opposed to the particular interests of its individual members; (3) that the policy of avoiding administrative waste requires rejection of the interpretation of the court of appeals in favor of the proper standard based on commonality of interests and

[2] Treas. Reg. 74 (1929 ed.), Art. 528; Treas. Reg. 77 (Revenue Act of 1932), Art. 528; Treas. Reg. 86 (Revenue Act of 1934), Art. 101(7)-1; Treas. Reg. 101 (Revenue Act of 1938), Art. 101(7)-1; Treas. Reg. 103 (1939 Code), § 19.101(7)-1; Treas. Reg. 111 (1939 Code), § 29.101(7)-1; Treas. Reg. 118 (1939 Code), § 39.101(7)-1.

the use of appropriate means to serve those interests; (4) that in light of these arguments, a trade association whose members all manufacture or distribute a particular branded product may under appropriate circumstances qualify for exemption from federal income tax as a business league; and (5) that application of the proper standard of law to the facts found in the district court requires reversal of the decision of the court of appeals.

I.

A. The structure of Section 501(c) of the Code makes it clear that Section 501(c)(6) does not contemplate a showing of direct public benefit. Section 501(c) creates a hierarchy of not-for-profit organizations and the statute and regulations state explicitly the degree of contribution to the social welfare required under each subsection. *See* §§ 501(c)(3)-501(c)(7).

In the case of Section 501(c)(6) and Treas. Reg. § 1.501 (c)(6)-1, the only "public benefit" required is the indirect benefit assumed to flow from joint action by businessmen to improve their shared business conditions. Such action is necessarily directed to advancing the competitive business interests of the members, and business league status has consistently been granted to organizations representing narrow shared interests so long as advancement of the members' *common* interest is shown to be the primary purpose of the organization. *See American Plywood Association* v. *United States*, 267 F.Supp. 830, *modified on other grounds*, 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W.D. Wash. 1967); *American Fishermen's Tuna Boat Association* v. *Rogan*, 51 F.Supp. 933 (S.D. Cal. 1943); *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17; Rev. Rul. 67-252, 1967-2 C.B. 195.

B. The court of appeals based its affirmance of the district court on the further premise that Treas. Reg. § 1.501 (c)(6)-1 imposes a substantive requirement that a trade association represent an entire "line of business"—interpreted by the court as a minimum percentage of market share or a minimum number of competitive products—in order to qualify for federal income tax exemption. *See National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 (2d Cir. 1977). Such a reading is foreign to the purposes of the Regulation as it has been construed by the courts and by the Internal Revenue Service. The distinction drawn by the relevant language of the Regulation is not between broad and narrow industry groups, but between activity directed to the common interests of the membership in improving the conditions which underlie their respective businesses and activity directed to generating particular profits or economies for individual members. *See, e.g., Washington State Apples, Inc.*, 46 B.T.A. 64, *acq.* 1942-1 C.B. 17; *Leaf Tobacco Exporters Association*, 10 Tax Ct. Mem. Dec. (CCH) 706 (1951).

C. The exemption is designed to serve the purpose of avoiding the administrative waste involved in collecting taxes on the incidental income of truly not-for-profit organizations as well as to promote the indirect benefit thought to flow from joint action to improve business conditions. *See* H.R. Rep. No. 922, 64th Cong. 2d Sess. 4 (1916). This purpose of administrative efficiency would be subverted by the substitution of a standard bearing no relation to the potential for abuse of the exemption by avoidance of the recognition of substantial taxable income, but based instead on breadth of market coverage, for the standards which are specifically mandated by the Regulations and which have been applied effectively by the courts for many years.

D. An association of persons selling a branded product, or of franchisees of a common franchisor, is subject to the same standards under Section 501(c)(6) as is any other not-for-profit trade association. No coherent theory could support a blanket denial of the exemption to such associations without rewriting the history of Section 501(c)(6) and rejecting its traditional construction. *Pepsi-Cola Bottlers' Association* v. *United States*, 369 F.2d 250, 252 (7th Cir. 1966); *cf. Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17; Rev. Rul. 67-252, 1967-2 C.B. 195.

II.

A. The application by the court of appeals of an incorrect standard to the determination of the Petitioner's appeal constitutes reversible error in light of findings of fact in the district court which support the Petitioner's claim to tax-exempt status and of the absence of a finding of any purpose which would disqualify the Petitioner for exemption from federal income taxation. The district court found that the Petitioner is an association of members with a common business interest and a purpose to further that interest. Findings 1, 10, 12. There is no finding indicating that the Petitioner was primarily engaged in furnishing particular services to its members within the meaning of the Regulation, that the earnings of the Petitioner inure to the benefit of its members or that the Petitioner is engaged in a business of a kind ordinarily carried on for profit. Accordingly, the decision of the court of appeals should be reversed and judgment entered for the Petitioner.

B. In the alternative, the case must be remanded to the district court for further findings of fact on issues relevant to whether the Petitioner is primarily engaged in the performance of particular services for individual members or in the furtherance of the common interests of its members.

ARGUMENT

I.

A Trade Association Operating Only in the Common Interest of Its Members May Qualify as a Business League Exempt From Federal Income Taxation Under Section 501(c)(6).

The government would deny the Petitioner tax exemption as a business league on two interrelated grounds:

> (1) that there must be evidence of "direct benefit to the public" by reason of the Petitioner's activities for the exemption to apply; and
>
> (2) that the language of the Regulation, that an organization's activities be "directed to the improvement of business conditions of *one or more lines of business*" (emphasis added), requires that a trade association, to be exempt, must represent the entire spectrum of competitive businesses in a given industrial or commercial field.

PCBA respectfully contends that the language, policy, legislative history and judicial interpretation of Section 501(c)(6) directly contravene both of these assertions.

A. *To Qualify for Exemption Under Section 501(c)(6), an Association Need Not Show That Its Activities Directly Benefit the Public.*

Qualification of a trade association for exemption under Section 501(c)(6) requires no showing of public benefit beyond that deemed to flow from the improvement of busi-

ness conditions among its members. This is best made clear by an examination of the statute itself—the five most relevant subsections of Section 501(c) being subsections (3) through (7).[3]

Congress has determined that the types of private voluntary organizations described in these provisions, by reason of their beneficient purposes and non-profit character, should be exempt from federal income tax. The directness with which an organization seeking exemption must serve an identifiable public interest, as distinguished from the common interest of its members, depends upon the subsection under which it seeks to qualify; and the statute creates a hierarchy under which the required directness diminishes as the exempting subsections proceed.

Thus, to qualify under Subsection (3), the organization must foster such well-recognized public purposes as the relief of the poor or under-privileged, the advancement of religion, or the defense of human or civil rights, Treas. Reg. §1.501(c)(3)-1(d)(2), the instruction or training of individuals for the improvement of their capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community, Treas. Reg. §1.501(c)(3)-1(d)(3), or the carrying on of scientific research in the public interest, Treas. Reg. §1.501(c)(3)-1(d)(5)(i).[4]

[3] Subsection (3) of Section 501(c) exempts certain religious, charitable, educational and like organizations. Subsection (4) exempts civic leagues or organizations operated for the promotion of social welfare. Subsection (5) exempts labor, agricultural or horticultural organizations. Subsection (6), the provision in issue here, exempts business leagues, chambers of commerce, boards of trade and real-estate boards. Subsection (7) exempts social and recreational clubs.

[4] Contributions made to Section 501(c)(3) organizations may be deductible by donors in computing their own federal income taxes, as well as estate and gift taxes, under Sections 170, 642(c),

An organization which does not meet this stringent standard may nevertheless qualify for exemption under Subsection (4) if it is primarily engaged in promoting in some way the common good and welfare of the people of the community—that is, if it is operated primarily for the purpose of bringing about civic betterments or social improvements. Treas. Reg. §1.501(c)(4)-1(a)(2). For example, an association devoted to preservation of a historic community could not qualify under Subsection (3) because its activities were for the benefit of residents of the community, who comprised its voting members; nevertheless, because it served a purpose of civic betterment it qualified under Subsection (4). Rev. Rul. 67-6, 1967-1 C.B. 135, *modified on other grounds,* Rev. Rul. 76-147, 1976-1 C.B. 151; *see similarly* Rev. Rul. 75-286, 1975-1 C.B. 210.

Similarly, an organization which cannot meet the standard of Subsection (4) may qualify under Subsection (5), if it has as its object the betterment of the conditions of those engaged in labor, agricultural, or horticultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. Treas. Reg. §1.501(c)(5)-1(a). In like manner, an organization may qualify for exemption under Subsection (6) even though it fails to meet the standards of Subsection (4), by reason of its failure to operate for the purpose of civic betterment or social improvement, Treas. Reg. §1.501(c)(4)-1(a)(2)(ii), and even though it fails to qualify under Subsection (5), because the requisite improvement of the conditions of all persons engaged in the specified pursuits (as distinguished from the members themselves) arises only indirectly. Rev. Rul. 67-252,

2055, 2106(a)(2) and 2522 of the Code. This is not true of contributions made to other types of exempt organizations referred to herein.

1967-2 C.B. 195. To complete the hierarchy, an organization can qualify for exemption under Subsection (7) if it serves only the pleasure, recreation or other non-profitable purposes of its members. Treas. Reg. § 1.501(c)(7)-1(a); *see, e.g.*, Rev. Rul. 73-520, 1973-1 C.B. 180.

The Congressional intendment, confirmed in the judicial decisions and Internal Revenue Service rulings, is clear that, to be exempt under Section 501(c)(6), an organization need serve no public interest beyond that which accrues from the improvement of the conditions under which the businesses of its members are conducted. This Court, too, has recognized in dictum that business league classification is appropriate for a mutual benefit organization whose activities are "largely animated by [a] commercial purpose." *Better Business Bureau* v. *United States*, 326 U.S. 279, 284-85 (1945).

The common purpose of promoting the production and sale of a given product has often been recognized as a qualifying interest in the "improvement of business conditions." Thus, the Internal Revenue Service has ruled, without any further finding of public benefit, that an organization is exempt as a business league where its "purpose is to improve business conditions among its members who are packers, processors and distributors of [a] processed agricultural product by promoting their common business interest in the development, sale and use of the product." Rev. Rul. 67-252, 1967-2 C.B. 195. So, too, has the association of a populous but narrowly defined group (tuna boat owners), organized for the purpose, among others, of protecting their interests in dealing with their powerful, highly concentrated market (the canning industry), been held to be directed toward "the improvement of business conditions" so as to qualify for exemption as a business league. *American Fishermen's Tuna Boat*

Association v. *Rogan*, 51 F. Supp. 933 (S.D. Cal. 1943). Similarly, an association directed to the promotion of Washington State apples has been held exempt. *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17. *See also* Rev. Rul. 65-164, 1965-1 C.B. 238 (multi-employer bargaining group qualifies as exempt business league, since its services in negotiating contracts for the membership, mediating or settling jurisdictional and other disputes, and furnishing information all furthered "the common purpose" and did not "represent services to individual members which they could purchase elsewhere." 1965-1 C.B. at 239).

The government, despite the cited Internal Revenue Service rulings and acquiesence, sought below to derive a "public benefit" requirement from the opinion of Judge Swan in *Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934). There the court denied exemption under the predecessor of Section 501(c)(6) to an organization performing securities clearing services for its members, who were brokers trading on the Produce Exchange. Judge Swan remarked that organizations granted exemption under the predecessor of Section 501(c) "are evidently granted exemption because of the benefit to be derived by the public from their activities." *Id.* at 143.

This statement cannot, however, be wrenched from its context to establish an overriding principle of statutory construction. Certainly Judge Swan cannot be thought to have established that, for example, a social club cannot be exempt under what is now Section 501(c)(7) unless the pleasure of its membership serves a broader public purpose. The issue before him was the exemption of an organization which charged a specific per-transaction fee to each individual member for which it performed a totally sep-

arate service of no benefit to any other member. The organization manifestly was engaged in performing "particular services for individual persons" within the meaning of Treas. Reg. § 1.501(c)(6)-(1) and its then-applicable predecessor—a circumstance which concededly bars exemption under Section 501(c)(6).

The statement quoted above must therefore be read in conjunction with Judge Swan's closely following pronouncement that there was no apparent reason "for exempting an association which merely serves *each member* as a convenience or economy in *his* business." 71 F.2d at 143 (emphasis added). The case thus forms part of a long line in which associations making separate per-transaction charges for services rendered to individual members, as opposed to engaging in activities for the *common benefit* of its members and primarily financed by dues or assessments based on general formulae not correlated to any specific service received, cannot qualify for exemption. *See, e.g., Contracting Plumbers Cooperative Restoration Corp.* v. *United States,* 488 F.2d 684, 687 (2d Cir.), *cert. denied,* 419 U.S. 827 (1974) (repair of excavations made by members, with charge to members for each job at rate previously charged by city for such repairs); *Southern Hardwood Traffic Association* v. *United States,* 411 F.2d 563, 564 (6th Cir. 1969) (collection of freight claims and transit refunds for individual members on commission basis); *United States* v. *Oklahoma City Retailers Association,* 331 F.2d 328, 331 (10th Cir. 1964) (operation of credit information service, where charges for credit ratings accounted for nearly all Association income); *Evanston-North Shore Board of Realtors* v. *United States,* 320 F.2d 375, 378-79 (Ct. Cl. 1963), *cert. denied,* 376 U.S. 931 (1964) (operation of multiple real estate listing service for members, with fee assessed for each listing and for each commission received through a listing).

On the contrary, where the performance of particular services for individual members is not involved, whatever public benefit is required has been found in the undoubted benefit to the public of the organization's improvement of the common field of business endeavor in which its members are engaged. *See, e.g., American Plywood Association* v. *United States,* 267 F. Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W. D. Wash. 1967). A fundamental premise of our pluralistic, market-oriented economy is that effective competition among contending interests best serves the consumer and the society as a whole. The Seventh Circuit thus adopted a correct interpretation of the statutory purpose in reasoning as follows:

> The [Pepsi-Cola Bottlers] Association falls within the scope of § 501(c)(6) and the regulations . . . . To be a business league it need not be devoted entirely to the general public welfare. Its operations do contribute to the improvement of Pepsi-Cola bottling business and hence to public consumers, unlike the operations considered in Produce Exchange Stock Clearing Ass'n, Inc. v. Helvering, 2 Cir., 1934, 71 F.2d 142, which did merely provide the convenience of clearing house facilities for a limited group of individual traders in securities.

Pepsi-Cola Bottlers' Association v. *United States,* 369 F.2d 250, 252 (7th Cir. 1966).

B. *To Qualify for Exemption Under Section 501(c)(6), an Association Need Not Represent an Entire Industry.*

The courts below appear to have assumed—without discussion—that the governing Treasury Regulation demands that a trade association, to be exempt, must represent the entire spectrum of competitive businesses in a given indus-

trial or commercial field—in this case the muffler industry. That assumption invests the phrase "directed to the improvement of business conditions of one or more lines of business" with a weight and specific content totally out of keeping with its position and evident function. While an industry-wide grouping may be appropriate in other contexts, such as determining a "relevant market" in an antitrust setting, it has no inherent relevance to the definition of a common business interest.

Viewed in the context of Section 501(c) of the Code, the reference to the purpose of improving conditions in a line of business is to be contrasted with the purposes which fall on either side. The greater purpose is to promote social welfare or conditions of all persons in a particular occupation, and is required for exemption under Section 501(c)(4) or (5). *See* Treas. Reg. §1.501(c)(4)-1(a)(2)(ii); Rev. Rul. 67-252, 1967-2 C.B. 195. The lesser purpose, which results in disqualification under Section 501(c)(6), is to perform particular services for individual persons; the Regulation's language is: ". . . the improvement of business conditions in one or more lines of business *as distinguished from* the performance of particular services for individual persons" (emphasis added). The fair intendment of the "improvement of business conditions . . ." language is only to require that the activities of the organization be directed to improving the business conditions of its membership *in common*, and not individually, in the sense that its contribution to the business of any one member be only at a step removed, through advancement of the interests of the membership as a whole. It is merely a restatement or reinforcement of the Regulation's first-stated rule: "A business league is an association of persons having some *common business interest*, the purpose of which is to promote *such common interest* . . ." (emphasis added). There simply is no minimum industry-wide coverage requirement.

Much has been made in the opinions below of Judge Swan's invocation of the doctrine of *noscitur a sociis, Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142, 144 (2d Cir. 1934), under which an organization seeking exemption under Section 501(c)(6) must possess the general characteristics of a board of trade or a chamber of commerce. But this establishes no standard of global beneficence.

It should be self-evident that any trade association or chamber of commerce promotes the business interests of a limited group at the peril of others who may have a contrary interest. A chamber of commerce which finances an industrial park to induce enterprises to locate in a community no doubt serves the common interest of local business, but at the necessary expense of the common interest of businesses located elsewhere. An organization which promotes the use of plywood undoubtedly does not represent the interests of those who manufacture competing building materials. An association of "independent," non-manufacturer tobacco dealers may have purposes which conflict with the interests of dealers who are also manufacturers. The common interest of tuna fishermen may not be the interest of those harvesting other kinds of fish—or raising cattle. And surely the promotion of Washington State apples in an economy of falling demand will damage the prospects of apples grown elsewhere.

Yet in each of these cases an organization, not performing particular services for individual persons, serves a common interest of the type contemplated by Section 501(c)(6). Rev. Rul. 70-81, 1970-1 C.B. 131; *American Ply-*

wood Association v. *United States,* 267 F.Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶9568 (W.D. Wash. 1967); *Leaf Tobacco Exporters Association,* 10 Tax Ct. Mem. Dec. (CCH) 706 (1951); *American Fishermen's Tuna Boat Association* v. *Rogan,* 51 F. Supp. 933 (S.D. Cal. 1943); *Washington State Apples, Inc.,* 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17.

The general characteristics of a board of trade or a chamber of commerce, to which the *noscitur a sociis* doctrine refers us, are precisely the advancement of the common business interest of a defined, and limited, group. It does not matter whether the interested group is broad or narrow. As the Internal Revenue Service has recently ruled, even a neighborhood business association may be exempt. Rev. Rul. 78-225, 1978-24 I.R.B. 13. What matters is the promotion of a common business interest and its promotion by appropriate means.

At bottom, the cases denying exemption under Section 501(c)(6) and its predecessor sections, while often citing the "line of business" language, deny exemption because the organizations involved performed *particular* services for *individual* members or engaged in a business of a kind regularly carried on for profit. They may have promoted a business interest, but not in common or not by appropriate means.

This group includes the many cases in which the organization, as any business might, performed particular services in consideration of a per-transaction fee. *See* cases cited at p. 20 *supra.* The very fact that a member of an organization is prepared to pay a transaction fee is testimony that he perceives a benefit to him not shared in common with others—that the benefits of the organization accrue directly to his business and in direct proportion to the particular amount he pays.

Beyond those cases are several more where, regardless of the method of payment, the courts simply determined that the organization involved was engaged in activities which were of a kind customarily or usually carried on by business organizations for profit. *E.g., General Contractors' Association* v. *United States,* 202 F.2d 633 (7th Cir. 1953) (performance of quantity surveys); *Northwestern Municipal Association* v. *United States,* 99 F.2d 460 (8th Cir. 1938) (aiding bondholders in enforcement of payment of obligations due them from municipalities); *Glass Container Industry Research Corp.* v. *United States,* 70-1 U.S. Tax Cas. (CCH) ¶9214 (W.D. Pa. 1970) (operation of research laboratory).

There is no quarrel with the principle that the activities of each organization claiming exemption must be examined to determine whether they promote the identified common interest by appropriate means—to ascertain whether a commercial business is being carried on or whether particular benefits are bestowed on individual members. PCBA respectfully contends, however, that the need to do so arises in contexts both broader and narrower and cannot invest the "line of business" language of the Regulation with a fixed meaning which *a priori* precludes exemption for any category of trade associations.

C. *Applying the Exemption to a Trade Association Operating Only in the Interest of Its Members Serves the Purpose of Administrative Convenience Without Inviting Abuse.*

As suggested in the discussion of legislative history at pp. 8-11 *supra,* Section 501(c)(6) appears designed to serve a dual purpose: First, the exemption from federal income taxation protects and encourages the kind of indirect public benefit which flows from not-for-profit trade associations serving the common interests of their memberships; and second, the exemption promotes administrative efficiency

by obviating the need for organizations to compute and pay, and for the government to collect, income tax where the structure, purposes and activities of the organizations are such as to assure no more than the incidental accrual of net taxable income from year to year. *See* H.R. Rep. 922, 64th Cong., 2d Sess. 4 (1916).

The interpretation of the statute and regulation contended for in Parts IA and IB *supra* is fully consonant with these objectives. The tests for exemption—whether the primary purpose is to serve the common or joint business interests of the membership, as opposed to the several interests of individual members, and whether the association is engaged in a regular business of a kind ordinarily carried on for profit—provide precisely the safeguards necessary to prevent abuse of the exemption as a means of avoiding or deferring taxation on income which would otherwise be reported by its members.

Direct gain to members is, of course, barred by the statute's requirements that an exempt business league not be organized for profit and that no part of its earnings inure to the benefit of any private shareholder or individual. This precludes any form of monetary distribution by an exempt business league to its members, including *non pro rata* rebates of charges assessed for such purposes as the use of demonstration space at trade shows organized by the association. *Michigan Mobile Home & Recreational Vehicle Institute* v. *Commissioner,* 66 T.C. 770 (1976); *see similarly National Chiropractic Association* v. *Birmingham,* 96 F. Supp. 874 (N.D. Iowa 1951) (payment of judgments against individual members in suits for malpractice or unauthorized practice of medicine); *Wholesale Grocers Exchange,* 3 Tax Ct. Mem. Dec. (CCH) 699 (1944) (distribution of royalties from licensing of association trademark).

Conversely, the absence of any such distributions, coupled with adequate assurance that none will take place (as by a provision in the by-laws of the organization directing that all income must be applied to the common purposes of the members, or that upon dissolution the assets of the association will pass to a charitable organization), has been cited as evidence that a business league passes the "inurement of net earnings" test. *Crooks* v. *Kansas City Hay Dealers' Association,* 37 F.2d 83, 86-87 (8th Cir. 1929); *American Refractories Institute,* 6 Tax Ct. Mem. Dec. (CCH) 1302, 1305 (1947).

More indirect possibilities of abuse are also ruled out by the proscriptions against inurement of net earnings to the benefit of members, against operation of a business ordinarily carried on for profit and against performance of particular services for individual members. The first two prevent use of the "business league" format to avoid recognition of income derived from third parties through operation of a joint venture. *National Association of Display Industries* v. *United States,* 64-1 U.S. Tax Cas. (CCH) ¶ 9285 (S.D.N.Y. 1964); *American Automobile Association,* 19 T.C. 1146, 1162 (1953). And the "business for profit" and "particular services for individual members" prohibitions combine to prevent use of an exempt business league primarily to perform functions for which the individual members would otherwise ordinarily contract with other enterprises or which they would ordinarily perform internally at greater cost.

Courts have frequently tested the qualification of associations for exemption by ascertaining whether the organization performs activities in competition with any profit-making businesses. *Compare Retailers Credit Association* v. *Commissioner,* 90 F.2d 47 (9th Cir. 1937) *and Glass Container Industrial Research Corp.* v. *United States,*

70-1 U.S. Tax Cas. (CCH) ¶ 9214 (W.D. Pa. 1970) *with National Leather & Shoe Finders Association*, 9 T.C. 121 (1947), *acq.* 1947-2 C. B. 3. The analogous test for use of a trade association to perform functions which otherwise would be performed by each member internally is often phrased in terms of whether the organization serves primarily to provide "a convenience and economy" in the operation of its members' businesses. *E.g., Produce Exchange Stock Clearing Association* v. *United States*, 71 F.2d 142, 143 (2d Cir. 1934); *Evanston-North Shore Board of Realtors* v. *United States*, 320 F.2d 375, 378 (Ct. Cl. 1963), *cert. denied*, 376 U.S. 931 (1964).

A further conceivable area of abuse of the business league exemption would be the building of a large surplus in excess of current operating expenses, thereby allowing members to convert what would be taxable profits into dues or assessments, deductible as ordinary and necessary business expenses under Section 162 of the Code and Treas. Reg. § 1.162-15(c), without a correlative stimulus to the exempt purpose. The likelihood is that the self-interest of the members would preclude such a use of a business league, even if it were permissible, since a member would be consigning funds to a holder which by assumption can produce no current benefit whatever to the member and which, by application of the principles discussed above, can never use the funds for the direct individual benefit of the member or return the avails of them to him in whole or in part. If nevertheless a business league were formed with such a scheme in mind, however, exemption could undoubtedly be denied on the ground that a primary purpose of the association was the performance of investment services for the individual members. *Cf. Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934).

The adequacy of the traditional tests to serve the Congressional purpose is further demonstrable by examining the actual consequences of imposing the income tax on a trade association organized and functioning in a manner designed to serve the common interests of its members, performing no particular services for individual members, operating no regular business of a kind ordinarily carried on for profit and retaining only such reserves as are reasonable to assure the continuance of current operations. Since the organization can conduct no substantial profitmaking activity, the taxable income would be limited to the extent of any surplus of contributions by members over deductible expenditures plus any incidental interest or investment income (again, by assumption, not in a large enough amount to constitute the organization of an investment vehicle for the members). This amount could be reduced to zero each year merely by limiting dues and relying on special assessments rather than holding even small reserves. Finally, any amount actually taxed would be offset by roughly half through the business expense deduction taken by each member, under Section 162 of the Code, for the cost of the additional contribution to the organization required to finance its payment of the tax.

The imposition of income tax on such an organization would thus have three main results: (1) a substantial amount of administrative inconvenience for both taxpayer and government; (2) the encouragement of a less efficient mode of operating a not-for-profit trade association; and (3) the discouragement of the Congressional purpose to promote joint action for the improvement of shared business conditions. All this would be counterbalanced by little or no contribution to the revenue.

It is evident, therefore, that limitation of the exemption to trade associations which serve only or primarily the common business interests of their members by appropriate means is both necessary and sufficient to the Congressional purpose of avoiding needless entanglement of truly non-profit organizations in the income tax collection process. To read a substantive "entire line of business" requirement into the Regulation on top of adequate constraints which have long been applied would add nothing but the administrative burden which the statute was designed to avoid.

D. *A Trade Association Composed of Franchisees of a Single Franchisor May Qualify for Exemption Under Section 501 (c)(6).*

In taking the position that an association of persons selling a branded product may not qualify for exemption, the government seeks to strike an irrational and unsupportable distinction. It would grant exemption if the common business interest of the members were that they did business in the same neighborhood. Rev. Rul. 78-225, 1978-24 I.R.B. 13. It would grant exemption if the common business interest of the members were in the sale of the same unbranded product. Rev. Rul. 67-252, 1967-2 C.B. 195. The exemption would be conceded if the common business interest were in a generic product produced in a geographic area. *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17. By what measure is it judged that a common interest defined, not by geography or genus, but by brand name is less fit an object of the exemption which Congress has extended? In each case, the members of the association compete in the marketplace with others whose interests the association does not represent.

It may be that the government's view proceeds from the unstated assumption that an association defined by the interest of the members in a single branded product must perforce be operated in the separate interests of its individual members. Does the inference arise from the presumption that membership is limited to a few? For all that appears, the neighborhood business association granted exemption in Rev. Rrl. 78-225, 1978-24 I.R.B. 13, might be a worthier subject of such a presumption. Does the inference arise because the promotion of a product is presumed to carry more direct benefit to those who trade in it when the product is branded than when it is a generic? Such a presumption rests on no more than its bare assertion.

Neither the Internal Revenue Service nor the courts should be obliged to speculate on such matters. A clear, workable standard is established by the statute and the inquiry need go no further. Under Section 501(c)(6), an association is entitled to exemption only if it seeks to promote, by appropriate means, the common interest of its membership as a whole. It cannot serve the separate interests of particular members or groups of members, nor can it engage in activities constituting the conduct of a regular business of a kind ordinarily carried on for profit.

A trade association of franchisees no doubt may fall afoul of these precepts no less than any other kind of trade association, but also no more. The issue is the nature and effect of the activities of the organization given the circumstances in which it carries them on. It is a question to be decided upon the facts presented and not on the basis of maxims or preconceptions.

PCBA respectfully contends, therefore, that this Court should not adopt a rule which renders an organization

automatically ineligible for exemption under Section 501 (c)(6) of the Code by reason of the fact that its members are all franchisees of a single franchisor or for any other reason deal in the same branded product. It respectfully urges that the Seventh Circuit Court of Appeals was correct when it concluded that "[t]he plaintiff Association [PCBA in that case] cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute and regulations a limitation wholly unsupported by the legislative history." *Pepsi-Cola Bottlers' Association* v. *United States,* 369 F.2d 250, 252 (7th Cir. 1966).

II.

The Courts Below Committed Reversible Error in Ordering Judgment for the United States.

A. *The Facts Found by the District Court, Together With the Undisputed Facts on the Record, Are Sufficient to Sustain the Petitioner's Claim to Exemption From Federal Income Taxation Under Section 501(c)(6).*

In light of the arguments advanced in Section I *supra,* the findings of fact made in the district court as to the structure, purposes and activities of the National Muffler Dealers Association sustain the Petitioner's claim to exemption from federal income taxation as a business league under Section 501(c)(6) of the Code.

The Petitioner is an association of members with a common business interest in the promotion and improvement of all aspects of the business of Midas Muffler franchisees (Findings 1, 12); the purpose of the Petitioner is to further that common interest, and the manner in which the Petitioner seeks to further the common interest of its members is by working toward improvement of the conditions within the framework in which the common business interests of the members are determined. According to Finding 10, this is done principally through negotiation with the common franchisor on issues of common interest to the membership (for example the provisions of the basic franchise agreement for the member franchisees, or the franchisor's policy of requiring a service charge for exercise of Midas guarantee rights); by publishing a newsletter (presumably so that the members will have available the maximum possible amount of information of common interest relevant to their business practices); and by holding annual conventions (presumably for a similar purpose).

The Petitioner is not engaged in a business of a kind ordinraily carried on for profit; or, at least, there is no finding of such engagement and no evidence on the record of any activity of the Petitioner which places it in competition with any for-profit or other business. In addition, there is no finding that a primary purpose of the organization is to provide particular services to individual members; indeed, the principal activities and accomplishments of the organization (Findings 10, 11) strongly suggest that the organization seeks to improve the conditions of any one member business only through activities of equal potential benefit to all—the negotiation of common agreements with the franchisor, the free dissemination of information to the entire membership and the initiation and administration of a group insurance program open to all members. Finally, the government has made no claim that any net earnings of the Petitioner inure to the benefit of its members. *National Muffler Dealers Association* v. *United States,* 565 F.2d 845, 846 (2d Cir. 1977). Thus, the Petitioner meets all the requirements for exemption as a business league.

As the facts found by the district court are sufficient to sustain the Petitioner's claim for exemption under Section 501(c)(6) of the Code, the judgment below should be reversed and the case remanded to the district court with instructions to enter judgment for the Petitioner.

B. *In the Alternative, the Facts Found by the District Court Are Insufficient to Support a Determination of the Tax Status of the Petitioner and the Case Must Be Remanded to the District Court for Further Findings of Fact and a Determination in Accordance With the Proper Legal Standard.*

Should this Court hold that the findings of fact of the district court, together with the undisputed facts on the record, are insufficient to support a judgment in favor of the Petitioner, the Court should remand the case for further findings of fact.

In this event the district court should be instructed to consider such relevant matters as: whether any individual charges are ever assessed on particular members for particular services performed by the Petitioner, *compare Evanston-North Shore Board of Realtors* v. *United States,* 320 F.2d 375 (Ct. Cl. 1963), *cert. denied,* 376 U.S. 931 (1964) *with American Plywood Association* v. *United States,* 267 F. Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W.D. Wash. 1967); whether any distributions or rebates of any kind are ever made by the Petitioner to its members, *compare Michigan Mobile Home & Recreational Vehicle Institute* v. *Commissioner,* 66 T.C. 770 (1976) *and Wholesale Grocers Exchange,* 3 Tax Ct. Mem. Dec. (CCH) 699 (1944) *with Texas Mobile Home Association* v. *Commissioner,* 324 F.2d 691 (5th Cir. 1963); whether the work of the Petitioner in the negotiation of agreements with the franchisor and of insurance contacts is ever directed to advancing the interests of, or negotiating an agreement for, any one member or subgroup of members rather than for the entire membership as a whole, *compare National Chiropractic Association* v. *Birmingham,* 96 F. Supp. 874 (N.D. Iowa 1951), *with National Leather & Shoe Finders Association,* 9 T.C. 121 (1946), *acq.* 1947-2 C.B. 3; whether any of the activities of the Petitioner are in direct competition with profit-making businesses, *compare Retailers Credit Association* v. *Commissioner,* 90 F.2d 47 (9th Cir. 1937) *with National Leather & Shoe Finders Association;* and whether a purpose of the Petitioner is the provision of services which would otherwise be performed or purchased by the individual members at greater cost or inconvenience, *see, e.g., Northwest Municipal Association* v. *United States,* 99 F.2d 460 (8th Cir.), *aff'g* 22 F.Supp. 18 (D. Minn. 1938); *American Automobile Association,* 19 T.C. 1146 (1953).

Assuming that the finding on any of these subjects points to a potentially non-exempt purpose, the district court should be instructed to determine whether the activity in question reflects a primary or incidental purpose of the organization, in accordance with the principles of *Trinidad* v. *Sagrada Orden,* 263 U.S. 578 (1924). *Texas Mobile Home Association* v. *Commissioner,* 324 F.2d 691, 695-96 (5th Cir. 1963); *Commissioner* v. *Chicago Graphic Arts Federation,* 128 F.2d 424, 426-27 (7th Cir. 1942).

As contended above, the fact that all members of the Petitioner are franchisees of a single franchisor is not in itself relevant to the determination of this case. Of course, since the problems associated with improving or promoting the franchised product or service, and the relationship of the franchisees with the franchisor, will in this instance determine to a great degree the common business interests of the membership, it is to these shared interests that the court must look in determining whether

the Petitioner's activities are primarily directed toward the improvement of the business conditions which underlie these common interests, or toward serving directly the interests of individual members.

It may be that franchisee associations will meet the test for exemption less frequently than other non-profit trade associations. The nature of the factual inquiry in each individual case must remain the same, however, just as the reasons of public policy and administrative ease which underly the exemption apply with as much force to franchisee associations as to business leagues whose members share other kinds of business interests.

CONCLUSION

The Court should hold that a trade association composed of franchisees of a common franchisor is not automatically precluded from federal income tax exemption as a business league, and the judgment of the Court of Appeals for the Second Circuit should therefore be reversed.

Dated: New York, New York
July 28, 1978

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